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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 45

TAGG BROS. & MOORHEAD, RICHARD M. LAVERTY, ENGAGED IN BUSINESS UNDER THE NAME AND STYLE OF LAVERTY BROS.; WILL H. WOOD ET AL., ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, WILLIAM M. JARDINE, AS SECRETARY OF AGRICULTURE; JOHN G. SARGENT, ATTORNEY GENERAL, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA

FILED MARCH 1, 1929

(34,047)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 11, 1929

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA, OMAHA DIVISION

In Equity. No. 847

TAGG BROS. & MOORHEAD, a Corporation Organized under the Laws of the State of Nebraska; Richard M. Laverty, Doing Business under the Name and Style of Laverty Bros.; Will H. Wood and Herman J. Oswald, Copartners, Doing Business under the Name and Style of Wood-Oswald Co., Petitioners,

vs.

THE UNITED STATES OF AMERICA, WILLIAM M. JARDINE, as Secretary of Agriculture; John G. Sargent, Attorney General, and James C. Kinsler, United States District Attorney for the District of Nebraska, Defendants

AMENDED PETITION—Filed March 15, 1927

To the Honorable the Judges of the United States District Court for the District of Nebraska, Omaha Division:

1. The petitioners respectfully represent that Tagg Bros. & Moorhead is a corporation, organized under the laws of the State of Nebraska, and having its principal place of business in the City of Omaha, in the County of Douglas, in the said State of Nebraska; that Richard M. Laverty is engaged in business under the name and style of Laverty Bros., in the City of Omaha, Douglas County, Nebraska; that Will H. Wood and Herman J. Oswald are co-partners doing business under the name and style of Wood-Oswald Co. That each and all of the petitioners herein reside in the District of Nebraska and are engaged in the live stock [fol. 3] commission business at the Union Stockyards in the City of Omaha, in Douglas County, within the said District of Nebraska, as hereafter more fully alleged:

The petitioners bring this bill for and on behalf of themselves and all other persons, firms or corporations engaged

in the business of buying or selling live stock on commission in the public market maintained by the Union Stockyards in the City of Omaha, in the District of Nebraska, who are similarly situated and who wish to join in this bill and become parties hereto.

2. That the Defendant, William M. Jardine, is Secretary of Agriculture of the United States of America; that the defendant, John G. Sargent, is Attorney General of the United States of America, and the defendant, James C. Kinsler, is the United States District Attorney for the District of Nebraska.

3. That the matter in controversy herein exceeds exclusive of interests and costs the sum or value of Three Thousand Dollars ($3,000); that the suit arises under the constitution and laws of the United States, as will hereafter more fully appear.

4. That the Union Stockyards of Omaha, Nebraska, is a live stock market in which cattle, sheep, swine, horses, mules and goats consigned to various persons at said stockyards from various parties in the United States are dealt in, bought and sold; that pursuant to the provisions of the Act of Congress of August 15, 1921, known as the Packers and Stockyards Act of 1921, the then Secretary of Agriculture in the year 1921 gave notice to the owners of the said Union Stockyards at Omaha as aforesaid that it was a [fol. 4] public stock yard within the meaning of Section 302 of the said Packers and Stockyards Act. That the petitioners and the other persons, firms and corporations on whose behalf this petition is presented are registered market agencies within the meaning of the said Act, and for many years last past have been continuously engaged in the business of live stock commission men at said Union Stockyards, and their business consists of buying and selling such live stock for the account of other persons upon a commission paid to such commission men for their services, in receiving and caring for such shipments of live stock, and negotiating the purchase or sale thereof; that as such live stock commission men they negotiate the sale of live stock consigned to them, and the purchase of live stock for other persons, acting exclusively in such transactions as an intermediary for the sellers and purchasers of live stock, and the

business of the petitioners and of the other market agencies consists in rendering the personal service and contributing skill and experience in carrying out the functions entrusted to them by their customers.

5. That on or about the 29th day of August, 1923, the petitioners, together wtib the other market agencies on whose behalf this suit is brought, pursuant to an informal arbitration conducted under the immediate direction and with the approval of the then Secretary of Agriculture in charge of the Packers and Stockyards Administration, filed their schedule of rates, services and charges in the office of the Packers and Stockyards Administration at Washington, which schedule was then and will be herein designated as Tariff No. 1. A copy of the said Tariff No. 1 is herewith filed and the petitioners pray that it may be taken as a part of this petition.

[fol. 5] 6. That thereafter and on January 16, 1926, the petitioners and the other market agencies herein referred to filed with the Packers and Stockyards Administration at Washington an amended schedule of rates, services and charges, being Tariff No. 2. A copy of the said Tariff No. 2 is herewith filed.

7. That afterwards and on the 25th day of January, 1926, the defendant, William M. Jardine, as Secretary of Agriculture, in charge of the Packers and Stockyards Administration, issued an order suspending Tariff No. 2, and directing a hearing upon the reasonableness of the same. A copy of the said order of January 25, 1926, is herewith filed.

8. That thereafter such proceedings were had that on the 19th day of November, 1926, the defendant, William M. Jardine, as Secretary of Agriculture, issued an order suspending and setting aside Tariff No. 2, which had gone into effect on the 27th day of March, 1926, pursuant to the provisions of the statute, and substituting in lieu thereof a schedule of rates and charges prescribed by the said defendant, and contained in the said order, and also issued an order requiring and compelling the petitioners and each and all of the other market agencies described therein to cease and desist on and after the first day of January, 1927, from demanding or collecting for any stockyards services

the rate or charge shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 16th day of January, 1926, and designated as Omaha Live Stock Exchange Tariff No. 2, and further ordering the petitioners and each of the said market agencies described therein to refrain from publishing, demanding or collecting any rate or charge for the furnishing of any stockyards [fol. 6] service in excess of the rate or charge determined in the said order by the said Secretary of Agriculture to be just, reasonable and non-discriminatory, and further ordering the said market agencies at least ten days prior to the first day of January, 1927, to publish, give notice of and file with the Secretary of Agriculture in accordance with the Packers and Stockyards Act and the regulations of the Secretary of Agriculture, a schedule effective January 1, 1927, showing all rates and charges for the stockyards services furnished by the said market agencies, and that no rate or charge so shown in such schedule should be in excess of the rate determined in the said order by the said secretary to be just, reasonable and non-discriminatory. A copy of the said order of November 19, 1926, is herewith filed, and made by reference a part hereof.

9. That the said order of the defendant, William M. Jardine, Secretary of Agriculture, made on November 19, 1926, is illegal and void for the following reasons:

10. The said order purports to be issued pursuant to the provisions of Title III of the Packers and Stockyards Act of 1921, and the proceedings conducted by the said Secretary preliminary to issuance of the said order purported to be had pursuant to the provisions of the said Act, but the said Act does not contain any authority giving to the Secretary of Agriculture any power to issue an order to the market agencies at the conclusion of any such hearing; the only authority in the said Act for the issuance of an order of the character set forth herein is found in Section 310 of the said Act, which in respect to market agencies provides only that the Secretary may determine and pre- [fol. 7] scribe what will be the just and reasonable rate or charge or rates or charges to be thereafter observed in such case, and what regulation or practice is or will be just, reasonable and non-discriminatory to be thereafter fol-

lowed, but the authority to issue an order contained in the said section applies only to the owners or operators of stockyards and not to market agencies. Because of the failure of the said statute to grant the defendant power to issue the said order, the same is void and of no effect.

11. The proceedings which resulted in the said order were instituted under sub-division (e) of Section 306 of the said Act as the result of the filing of the new rates by the market agencies, as set forth and embodied in Schedule No. 2 aforesaid, and, by the terms of the said section, and by the terms of the order of suspension of January 25, 1926, the lawful scope of the inquiry could not extend beyond the question whether the new rates included in Schedule No. 2, insofar as they were in excess of the rates in Schedule No. 1, were for any reason unlawful or were unjust, unreasonable or discriminatory, and so much of the said order as reduces the rates and charges in Schedule No. 1 was outside the lawful scope of the said inquiry and to that extent the said order is contrary to the terms of the said law and is void.

12. The said schedule of rates and charges contained in the conclusions and order of November 19, 1926, constitute an average reduction of substantially fifteen per cent of the customary and usual rates which have been charged in the said market by the said market agencies, and in other similar markets throughout the United States for several years prior to 1926, and for all of the sixty-eight market agencies engaged in business at the Omaha market will [fol. 8] result in an aggregate reduction each year of many thousands of dollars in the gross returns received by each of the said market agencies. The said charges made prior to the said hearing were not excessive and were not unjust, unreasonable or discriminatory, but on the contrary the rates and charges prescribed by the said Secretary of Agriculture in the said order of November 19, 1926, are unjust and illegal in that they will not provide sufficient remuneration to repay the market agencies for the expenses incurred by them in rendering the services, and a reasonable and just compensation for their own services, and the enforcement of the said order will have the effect of depriving the said market agencies, including these petitioners, of their

property without due process of law contrary to the provisions of the Fifth Amendment to the Constitution of the United States. That the actual expense of rendering the service will in a great many instances be more than the said schedule will yield, so that if the said market agencies render the service expected and required of them by their customers and necessary to enable them to continue in business, they will be compelled to render such service at an actual loss.

13. The evidence presented to the said Secretary of Agriculture at the said hearing was not sufficient to establish that the schedule of rates and charges contained in either Schedule No. 1 or Schedule No. 2 aforesaid was unjust, unreasonable or discriminatory.

The evidence presented to the said Secretary of Agriculture at the said hearing was not sufficient to establish that the schedule of rates and charges prescribed by the said Secretary of Agriculture in his order of November 19, 1926, [fol. 9] would adequately compensate the market agencies for the services rendered by them and for the disbursements made in rendering such service.

14. The said order of the Secretary of Agriculture of November 19, 1926, insofar as it seeks to compel the said market agencies, if they wish to continue in business, to render the services required and expected from them by their customers, and necessary to enable them to continue in business at a rate fixed and determined by the Secretary of Agriculture, is violative of the rights of the said market agencies and their customers under the Fifth Amendment to the Constitution of the United States, in that it deprives them of their freedom of contract and forbids the said market agencies to sell their services at a price satisfactory to them and to their customers; and that so much of the said Act of August 15, 1921, known as the Packers and Stockyards Act of 1921, as authorizes the Secretary of Agriculture to determine and prescribe rates and charges to be made by the petitioners, and the other market agencies engaged in like business, for the personal service rendered by them to their customers, violates the Fifth Amendment to the Constitution of the United States in that it deprives petitioners and the other market agencies of their prop-

erty and their liberty without due process of law. Your petitioners further aver that if Title III of the Packers and Stockyards Act of 1921 can be interpreted as conferring any power upon the Secretary of Agriculture to issue an order which fixes the maximum rates to be charged by your petitioners and other market agencies, as commissions for their personal services as such commission men, then and in that event, so much of said Title III as purports to confer such power upon the Secretary of Agriculture is [fol. 10] null and void as in excess of the power granted to the Federal Government by the Constitution of the United States. Your petitioners aver and submit that a power to fix the maximum commissions, which may be charged by commission men for their personal services in the purchase and sale of cattle, is not a regulation of commerce within the meaning of the Constitution of the United States and that such power is not conferred either by the Commerce Clause, or any other provision of the Constitution.

15. Yet the said defendant, the Secretary of Agriculture, proposes to enforce the said order and to compel the petitioners to render the said services for the said schedule of rates or charges or go out of business, and if the said market agencies continue to render their service without complying with the said order, the defendants threaten and intend to cause the registration of the said market agencies to be revoked and to cause the said market agencies, the members of the firms, and the officers of the corporations, to be prosecuted, pursuant to the provisions of Section 314 of the said Packers and Stockyards Act, whereby a penalty may be levied upon each and every market agency in the sum of Five Hundred Dollars for each offense, and wherein it is provided that each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense, and whereby it is made the duty of the various district attorneys, including the defendant, James C. Kinsler, United States District Attorney, to institute proceedings for the recovery of such penalty.

16. The petitioners allege that during the course of their business as live stock commission men, they have uniformly dealt fairly and honestly with their patrons and have not imposed, collected or received from them any unjust, un-

reasonable or unfair commission or charges for their serv-
[fol. 11] ices, by reason whereof a relation of trust and confidence has been built up between the petitioners and their said patrons, and as a result thereof the petitioners enjoy a valuable goodwill in their aforesaid business. That the continuance of this business relation, and the protection and preservation of the goodwill of the business of the petitioners, and of the other market agencies affected by the said order of November 19, 1926, is highly valuable and important to the petitioners and to the other market agencies, and to have the same destroyed, or to be prevented from continuing and carrying on the business relations, would produce a great and irreparable loss and injury to the petitioners and to the other market agencies affected.

17. The petitioners and the other market agencies, on whose behalf this proceeding is brought, are without adequate remedy at law in the premises, and can have relief only in a court of equity, by an injunction enjoining the Secretary of Argiculture from enforcing the said order of November 19, 1926, either by revoking the registration of market agencies or by causing proceedings to be instituted against them for the forfeitures and penalties prescribed in the said Act; and by an injunction enjoining the Attorney General and the said James C. Kinsler as United States District Attorney for the District of Nebraska, from instituting or causing to be instituted any suits for the enforcement of the said penalties, and each and all of the defendants from in any manner enforcing the provisions of the said order of November 19, 1926, until the legality thereof has been inquired into and determined by this court.

18. That unless the effective date of the said order be suspended or postponed by order of this court, or of the judges thereof, prior to the 21st day of December, 1926, [fol. 12] these petitioners and all of the other market agencies at the Omaha market affected by the said order of November 19, 1926, will suffer great and irreparable damage for which they can in no manner be compensated, for the reason that if they comply with the said order and file their amended schedules on December 21, 1926, they are barred by the provisions of the said Packers and Stockyards Act from charging or collecting any greater rate or charge than

as therein stated, and if they fail to file the said amended schedule as ordered by the said Secretary of Agriculture, they will become subject to the penalties of the said Act, and their registration as market agencies will be in danger.

Wherefore these petitioners on behalf of themselves and of all the other market agencies affected by the said order, pray aid of this court that the said order of November 19, 1926, may be found and declared to be null and void and may be set aside by the decree of this court and that the petitioners, the Secretary of Agriculture, the Attorney General, and the said United States District Attorney, and all persons acting by, through or under them, may be enjoined from enforcing said order, and from cancelling the registration of the said market agencies, and from instituting any proceedings to collect or enforce any penalties under the said Act, and from interfering with the said market agencies and in the collection of the rates and charges set forth in the schedule thereof on file and legally in force prior to the making of the said order.

And that pending the final hearing and determination hereof a temporary injunction issue against the said Secretary of Agriculture, the said Attorney General, and the [fol. 13] said United States District Attorney against the enforcement of the said order of November 19, 1926, in any manner, and that pending the hearing of the said application for the temporary injunction and in order to prevent the irreparable injury hereinabove set forth, a temporary restraining order issue effective for a period of sixty days preventing the enforcement of the said order of November 19, 1926, by any means whatsoever and that the said restraining order be continued in force from time to time until the said application for a temporary injunction be acted on by this court, and that the petitioners for themselves and for all other persons affected by the said order have such other and further relief as equity and justice may require and as to the court may seem just and proper.

James M. Beck, Francis A. Brogan, Solicitors for Petitioners.

[File endorsement omitted.]

[fol. 14] EXHIBIT TO PETITION

Rules and By-Laws of the Omaha Live Stock Exchange, Issued March 15, 1924

Supplement No. 1, Issued March 15, 1924

Following is schedule of selling commission charges according to the award of the arbitrators, which was approved by the Secretary of Agriculture on July 27, 1923, and made effective on September 1, 1923:

Omaha Selling Commission—Single Ownership—Carload Lots

Cattle—20 head or less, $15.00 and 70¢ per head for each additional head over 20 head, with a maximum of $19.00. When car contains less than 14 head, the "drive in" schedule applies.

Calves (Single Deck)—50 head or less, $15.00 and 30¢ per head for each additional head over 50 head, with a maximum of $20.00.

Calves (Double Deck)—70 head or less, $21.00 and 30¢ per head for each additional head over 70 head, with a maximum of $26.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs (Single Deck)—50 head or less $12.00 and 15¢ per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 17,000 pounds.

Hogs (Dougle Deck)—80 head or less $17.00 and 15¢ per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 27,000 pounds. When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single-deck $14.00; double deck $20.00. When a car contains less than 40 head, the "drive-in" schedule applies.

Mixed Live Stock

Cattle—75¢ per head. Single-deck, maximum $19.00.

Calves—35¢ per head. Single-deck, maximum $20.00; double-deck, maximum $26.00.

Hogs—25¢ per head. Single-deck, maximum $14.00; double-deck, maximum $22.00.

[fol. 15] Sheep—20¢ per head. Single-deck, maximum $14.00; double deck, maximum $20.00.

Minimum of $15.00, and maximum of $25.00, on single-deck car. Minimum of $20.00, and maximum of $28.00, on double-deck car. When a car contains cattle and calves only, the minimum shall be $15.00 and the maximum $22.00.

Selling Commission—Plural Ownership—Carload Lots

Plural Owner Car Lots—Sold as Single Ownership

When plural ownership car load lots of live stock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Ownership, Marks, Brands or Other Identification

When car loads of live stock require prorating, separate sorting, selling or weighing for ownership, marks, brands or other identification, or at request of shippers, the following rates shall apply:

Unmixed Cars

Cattle—75¢ per head. Single-deck, minimum $16.00, maximum $20.00.

Calves—35¢ per head. Single-deck, minimum $16.00, maximum $21.00; double-deck, minimum $22.00, maximum $27.00.

Hogs—25¢ per head. Single-deck, minimum $13.00, maximum $15.00; double-deck, minimum $18.00, maximum $23.00.

Sheep—20¢ per head. Single-deck, minimum $14.00, maximum $16.00; double-deck, minimum $20.00, maximum $22.00.

Mixed Cars

Cattle—75¢ per head. Single-deck maximum $20.00.

Calves—35¢ per head. Single-deck maximum $21.00; double-deck, maximum $27.00.

Hogs—25¢ per head. Single-deck, maximum $15.00; double-deck, maximum $23.00.

Sheep—20¢ per head. Single-deck, maximum $16.00; double-deck, maximum $22.00.

Minimum of $16.00, and maximum of $25.00, on single-
[fol. 16] deck car. Minimum of $21.00, and maximum of $28.00 on double-deck car. When a car contains cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership car loads.

Stock Driven or Hauled In

The rates of the present Omaha "drive-in" schedule shall apply.

Extra Services

Drafts

1. Single Ownership.—When requested or necessary to grade or sort car lots of live stock of single ownership into market grades and classes, a charge of 15¢ shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge $2.00.

2. Plural Ownership.—When requested or necessary to grade or sort car lots of live stock of plural ownership for ownership, market grades and classes, brands, marks or other identification, a charge of 15¢ per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge $3.00.

Prorating

When prorating is done a charge of 25¢ for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales

When individual statements are requested in addition to the master prorate sheet, a charge of 5¢ extra shall be made for each statement.

Respectfully, A. F. Stryker, Secretary-Traffic Manager.

[fol. 17] EXHIBIT TO PETITION

Omaha Live Stock Exchange Tariff No. 2

(Cancels Tariff No. 1 Together with all Supplements Thereto)

Issued January 16th, 1926. Effective January 26th, 1926

To Packers and Stockyards Administration, United States Department of Agriculture, Washington, D. C.:

The following is the complete schedule of rates and charges for selling and purchasing live stock now being charged and observed by the undersigned live stock commission merchants, members of the Omaha Live Stock Exchange, and doing business at the Union Stock Yards, Omaha, Nebraska:

Section 1

Selling Commissions

Single Ownership—Carload Lots

Cattle:

20 head or less, $16.00,—and 75¢ per head for each additional head over 20 head, with a maximum of $21.00. When car contains less than 14 head the "drive-in" schedule applies.

Calves—Single Deck:

50 head or less, $16.00,—and 35¢ per head for each additional head over 50 head, with a maximum of $21.00.

Double Deck:

70 head or less, $21.00,—and 35¢ per head for each additional head over 70 head, with a maximum of $27.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs—Single Deck:

50 head or less, $12.00,—and 25¢ per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 16,500 pounds.

Double Deck:

80 head or less, $17.00,—and 25¢ per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 24,000 pounds. When a car contains less than 40 head the "drive-in" schedule applies.

Sheep—Single deck, $14.00.

Double deck, $20.00.

When a car contains less than 40 head, the "drive-in" schedule applies.

[fol. 18] Section 2

Mixed live stock	Per head	Single-deck, maximum	Double-deck, maximum
Cattle	80¢	$21.00	.....
Calves	35¢	21.00	$27.00
Hogs	25¢	14.00	22.00
Sheep	20¢	14.00	20.00

Minimum of $16.00, and maximum of $25.00, on single-deck car.

Minimpm of $21.00, and maximum of $27.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Where three species are contained in the car, minimum of $17.00 and maximum of $27.00.

Section 3

Selling Commission

Plural Ownership—Carload Lots

Plural owner car lots—sold as single ownership:

When plural ownership car load lots of live stock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural owner car lots handled for ownership, marks, Brands, or other identification:

When car loads of live stock require prorating, separate sorting selling or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply:

Unmixed car	Per head	Single-deck		Double-deck	
		Minimum	Maximum	Minimum	Maximum
Cattle	80¢	$17.00	$21.00	.....	.....
Calves	35¢	17.00	21.00	$23.00	$28.00
Hogs	25¢	13.00	15.00	18.00	23.00
Sheep	20¢	14.00	16.00	20.00	22.00

Mixed cars	Per head	Single-deck, maximum	Double-deck, maximum
Cattle	80¢	$21.00	.....
Calves	35¢	21.00	$24.00
Hogs	25¢	15.00	23.00
Sheep	20¢	16.00	22.00

Minimum of $16.00, and maximum of $25.00, on single-deck car.

Minimum of $21.00, and maximum of $28.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $17.00 and the maximum $24.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on

single ownership car loads. Where car contains three [fol. 19] species of live stock a minimum of $18.00 and a maximum of $28.00 shall apply.

Section 4

Stock driven or hauled in:

Cattle—80¢ per head up to and including 20 head.
Calves—40¢ per head up to and including 40 head.
Above 20 head of cattle up to and including 30 head; and above 40 head of calves, up to and including 60 head, shall be considered car load lots, upon which carload rates shall apply, provided the total weight does not exceed 22,000 pounds.

Hogs—28¢ per head up to and including 43 head.
Above 43 head of hogs, up to and including 70 head shall be considered carload lots, upon which carload rates shall apply, provided the total weight does not exceed 17,000 pounds.

Sheep—20¢ per head up to and including 70 head.
Above 70 head, up to and including 150 head, shall be considered a single deck. Above 150 head, up to and including 300 sheep or goats, shall be considered a double deck, provided that the weight of these shipments does not exceed 12,000 pounds and 22,000 pounds respectively.

Section 5

Extra Services

Drafts:

1. Single ownership:

When requested or necessary to grade or sort car lots of live stock of single ownership into market grades and classes, a charge of 15¢ shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge $2.00.

2. Plural ownership:

When requested or necessary to grade or sort car lots of live stock of plural ownership for ownership, market grades and classes, brands, marks, or other identification, a charge of 15¢ per draft shall be made for each draft over

three per deck—each draft to be represented by a separate scale ticket. Maximum charge $3.00.

Prorating:

When prorating is done a charge of 25¢ for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual account sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5¢ extra shall be made for each statement.

[fol. 20] Section 6

The commission to be charged members of this Association, and regular yard traders, shall be forty cents per head for each and every head of cattle, regardless of number, if weighing 425 pounds or over. For cattle weighing under 425 pounds, 20¢ per head. Hogs $7.00 per car. Sheep $7.00 per car, for single decks; and $10.00 for double deck cars.

On less than carloads of hogs the charge shall be 14¢ per head and on less than carloads of sheep the charge shall be 10¢ per head.

Section 7

On business forwarded from other markets, full commission shall be charged.

Section 8

In determining application of said rates of commission, the official count and classification of the Union Stock Yards Company shall rule in all cases.

Section 9

No account sale shall be rendered for less than 80¢ on cattle, 40¢ on calves, and 30¢ on hogs, sheep or goats.

Purchasing Live Stock

Section 10

The commission for purchasing live stock shall be:

Stocker and feeder cattle, $15.00 per car, where purchased in carload lots, but where cattle are bought and picked up from three or more parties the commission shall be 75¢ per head, minimum $15.00; maximum $18.75. Cattle for immediate slaughter, $12.50 per car, where purchased in carload lots, but where cattle are bought or picked up from three or more parties, the commission shall be 60¢ per head; minimum $12.50, maximum $15.00.

Where cattle are purchased for immediate slaughter for outside packers by their own buyers, members merely clearing such transactions, the charge shall be $5.00 per carload.

When purchases are made for more than one party in one car, the commission shall be 75¢ per head, without regard to number of head in car, provided that no one owner shall be charged more than the carload rate.

Calves—Cattle rates shall apply except where purchases are made for more than one owner in a car. Charges shall be 40¢ per head; minimum $15.00 per car; maximum, $18.75 per car. Calves shall be considered animals weighing less than 425 pounds.

When less than 15 cattle are shipped out in one car, commission shall be $1.00 per head.

Sheep—20¢ per head, single deck; minimum $11.00, maxi-
[fol. 21] mum $14.00 per car; double deck minimum $16.00, maximum $20.00 per car. Where double decks of sheep are purchased upon order and single decks are furnished by the carriers for any reason, the commission charges are to be based upon the double deck rate.

Sheep purchased to be driven or hauled out, shall be 20¢ per head up to 55 head. Above 55 head, up to and including 150 head shall be considered a single deck. Above 150 head up to and includng 300 head shall be considered a double deck, provided that the weight of these shipments does not exceed 12,000 pounds for single deck or 22,000 pounds for double deck.

Hogs for immediate slaughter shall be $8.00 for single decks and $10.00 for double decks. (Section 4 to determine the number of head constituting a carload when driven out.)

Stock Hogs—Single deck, $15.00; double deck, $25.00. Stock hogs which are driven or hauled out, 20 cents per head up to seventy-five head; larger lots, carload rates.

All hogs purchased, other than stock hogs or hogs for immediate slaughter shall be 14¢ per head, minimum $6.00, maximum $7.50 per single deck and minimum $8.50, maximum $12.00 per double deck.

Section 11

All live stock purchased or paid for or ordered out or where assistance has been rendered by members, their agents or employes, whether made by or for a speculator, yard trader, feeder, farmer or other person, shall be deemed a purchase and charged for at the above rates.

Section 12

Members may order out entire shipments of stock where they have sold to the shipper 50% or more thereof.

Section 13

On cars thirty-seven feet or longer in length, an additional charge of 75¢ per foot shall be made, provided such car contain the minimum weight charged for by the railroad handling same. (This section applies to purchases only.)

[fol. 22] EXHIBIT TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, PACKERS AND STOCKYARDS ADMINISTRATION

Docket No. 143

THE SECRETARY OF AGRICULTURE

vs.

AMERICAN LIVE STOCK COMMISSION COMPANY, LOU BICK Commission Company, Bliss & Son, Bliss, Wellman & Hopkins, Boetel Live Stock Commission Company, Bowles Live Stock Commission Company of Omaha, Bryson

Bros., Alex G. Buchanan & Son, Burke-Rickly Company, Byers Bros. & Company, Central Live Stock Commission Company, John Clay & Company, Clifton Commission Company, Byron Clow & Company, Corn Belt Commission Company, Cox-Jones Commission Company, W. F. Denny & Company, Donahue Bros., Inc., Allen Dudley & Company, Dworak-Stolinski Commission Company, Farris-Marcy Company, Fonda-Kells & Christie Company, Frazier-Johnson Company, Gant Live Stock Commission Company, Globe Commission Company, Great Western Commission Company, Greene, Madden & Company, Ingwersen Bros., Ingwersen & Daugherty, Inter-State Live [fol. 23] Stock Commission Company, Jackson Live Stock Company, Jacob Jacobs Live Stock Commission Company, Laird Live Stock Commission Company, Laverty Bros., Lee Live Stock Commission Company, Lindley-Cahow Commission Company, McAdams Bros. & Ihnen, R. C. McCullough Commission Company, Martin Bros. & Company, Melady Bros., Mutual Live Stock Commission Company, Omaha Live Stock Commission Company, John Ralston Commission Company, Randall & Company, Record Live Stock Commission Company, Roberts Bros. & Rose, L. E. Roberts & Company, Charles O. Robinson & Company, Rosenbaum Bros. & Company, Security Live Stock Commission Company, Wm. R. Smith & Son, Snyder-Malone-Coffman Company, Tagg Bros. & Moorhead, Triangle Live Stock Commission Company, Ward Live Stock Commission Company, Williams & Sons, Winn Bros., Geo. M. Wood Sheep Commission Company, Wood Brothers, Wood-Oswald Company, Frank Anderson & Son, Doud, Keefer & Ettlinger, John Harvey & Company, Hanley & Company, Henry S. Luberger, Gill & Wilkerson, Star Live Stock Commission Company, Blanchard-Keenan Company, Respondents.

Order of Suspension of Tariff No. 2 of Respondents and Notice of Hearing

It appearing to the Secretary of Agriculture that the American Live Stock Commission Company; Lou Bick Commission Company; Bliss & Son; Bliss, Wellman & Hopkins; Boetel Live Stock Commission Company; Bowles Live [fol. 24] Stock Commission Company of Omaha; Bryson

Bros.; Alex G. Buchanan & Son; Burke-Rickly Company; Byers Bros. & Company; Central Live Stock Commission Company; John Clay & Company; Clifton Commission Company; Byron Clow & Company; Corn Belt Commission Company; Cox-Jones Commission Company; W. F. Denny & Company; Donahue Bros., Inc.; Allen Dudley & Company; Dworak-Stolinski Commission Company; Farriss-Marcy Company; Fonda-Kells & Christie Company; Frazier-Johnson Company; Gant Livestock Commission Company; Globe Commission Company; Great Western Commission Company; Greene, Madden & Company; Ingwersen Bros.; Ingwersen & Daugherty; Inter-State Live Stock Commission Company; Jackson Live Stock Company; Jacob Jacobs Live Stock Commission Company; Laird Live Stock Commission Company; Laverty Bros.; Lee Live Stock Commission Company; Lindley-Cahow Commission Company; McAdams Bros. & Ihnen; R. C. McCullough Commission Company; Martin Bros. & Company; Melady Bros.; Mutual Live Stock Commission Company; Omaha Live Stock Commission Company; John Ralston Commission Company; Randall & Company; Record Live Stock Commission Company; Roberts Bros. & Rose; L. E. Robberts & Company; Charles O. Robinson & Company; Rosenbaum Bros. & Company; Security Live Stock Commission Company; Wm. R. Smith & Son; Snyder-Malone-Coffman Company; Tagg Bros. & Moorhead; Triangle Live Stock Commission Company; Ward Live Stock Commission Company; Williams & Sons; Winn Bros.; Geo. M. Wood Sheep Commission Company; Wood Brothers; Wood-Oswald Company; Frank Anderson & Son; Doud-Keefer & Ettlinger; John Harvey & Company; Hanley & Company; Henry S. Luberger; Gill & Wilkerson; Star Live Stock Commission Company, and Blanchard-Keenan Company, respond-
[fol. 25] ents, comprise the Omaha Live Stock Exchange of Omaha, Nebraska, and are registered as market agencies engaged in business at the Union Stock Yards, Omaha, Nebraska, under the Packers and Stockyards Act, 1921; that in accordance with the requirements of said Act they have heretofore filed and put into effect schedules of rates and charges for their services as such market agencies; that on or about the 16th day of January, 1926, the respondents made and published, effective January 26, 1926, and

have filed a new schedule of rates and charges designated as Tariff No. 2, for the buying and selling of livestock in commerce at said stockyards, stating new rates and charges, several of which are materially different from and greater than those set forth in their schedules now on file, to all of which schedules reference is herein made for comparison of the rates and charges specified therein; that upon an examination of the records and other information in the possession of the Department of Agriculture the Secretary of Agriculture has reason to believe that the increases proposed by such new schedules are not justified at this time and that such increases are in fact unreasonable; and it therefore appearing that a proceeding under Title III of the Packers and Stockyards Act, 1921, should be had for the purpose of determining the reasonableness and lawfulness of said new rates and charges; and that pending the hearing thereof and the decision of the Secretary of Agriculture the operation of said tariff No. 2 should be suspended and its use deferred;

It is therefore ordered that the operation and use of the [fol. 26] schedule of rates and charges for buying and selling livestock prescribed in said Tariff No. 2 of the various respondents, hereinbefore named members of said Omaha Live Stock Exchange, are hereby suspended and deferred until the expiration of thirty days beyond the time when such schedule would otherwise go into effect, as aforesaid;

It is further ordered that notice to the above mentioned respondents is hereby given that a hearing upon the reasonableness and lawfulness of the said schedule of rates and charges will be held before an examiner of the Packers and Stockyards Administration in the Court Room of the United States District Court at Omaha, Nebraska, beginning on the 24th day of February, 1926, at the hour of ten o'clock a. m. or as soon thereafter as the parties may be heard and continuing from time to time until said hearing is completed. At the above hearing the above named respondents will have the right to appear and show cause why a further order in respect to the said schedule of rates and charges should not be made by the Secretary of Agriculture in conformity with the provisions of Title III of the Packers and Stockyards Act, 1921.

In witness whereof the Secretary of Agriculture has caused this order of suspension and notice of hearing to

be issued and has signed the same and caused the official seal of the Department of Agriculture to be affixed hereto in the District of Columbia this 25th day of January, 1926.

(Signed) W. M. Jardine, Secretary of Agriculture.

(Seal.)

[fol. 27] EXHIBIT TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, PACKERS AND STOCKYARDS ADMINISTRATION

Department of Agriculture, Washington

Docket No. 143

THE SECRETARY OF AGRICULTURE

vs.

AMERICAN LIVE STOCK COMMISSION COMPANY, LOU BICK COMMISSION COMPANY, BLISS & SON, BLISS, WELLMAN & HOPKINS, BOETEL LIVE STOCK COMMISSION COMPANY, BOWLES LIVE STOCK COMMISSION COMPANY OF OMAHA, BRYSON BROS., ALEX. G. BUCHANAN & SON, BURKE-RICKLY COMPANY, BYERS BROS. & COMPANY, CENTRAL LIVE STOCK COMMISSION COMPANY, JOHN CLAY & COMPANY, CLIFTON COMMISSION COMPANY, BYRON CLOW & COMPANY, CORN BELT COMMISSION COMPANY, COX-JONES COMMISSION COMPANY, W. F. DENNY & COMPANY, DONAHUE BROS., INC., ALLEN DUDLEY & COMPANY, DWORAK-STOLINSKI COMMISSION COMPANY, FARRIS-MARCY COMPANY, FONDA-KELLS & CHRISTIE COMPANY, FRAZIER-JOHNSON COMPANY, GANT LIVE STOCK COMMISSION COMPANY, GLOBE COMMISSION COMPANY, GREAT WESTERN COMMISSION COMPANY, GREENE, MADDEN & COMPANY, INGWERSEN BROS., INGWERSEN & DAUGHERTY, INTER-[fol. 28] STATE LIVE STOCK COMMISSION COMPANY, JACKSON LIVE STOCK COMPANY, JACOB JACOBS LIVE STOCK COMMISSION COMPANY, LAIRD LIVE STOCK COMMISSION COMPANY, LAVERTY BROS., LEE LIVE STOCK COMMISSION COMPANY, LINDLEY-CAHOW COMMISSION COMPANY, MCADAMS BROS. & IHNEN, R. C. MCCULLOUGH COMMISSION COMPANY, MARTIN BROS. & COMPANY, MELADY BROS., MUTUAL LIVE

Stock Commission Company, Omaha Live Stock Commission Company, John Ralston Commission Company, Randall & Company, Record Live Stock Commission Company, Roberts Bros. & Rose, L. E. Roberts & Company, Charles O. Robinson & Company, Rosenbaum Bros. & Company, Security Live Stock Commission Company, Wm. R. Smith & Son, Snyder-Malone-Coffman Company, Tagg Bros. & Moorhead, Triangle Live Stock Commission Company, Ward Live Stock Commission Company, Williams & Sons, Winn Bros., Geo. M. Wood Sheep Commission Company, Wood Brothers, Wood-Oswald Company, Frank Anderson & Son, Doud, Keefer & Ettlinger, John Harvey & Company, Hanley & Company, Henry S. Luberger, Gill & Wilkerson, Star Live Stock Commission Company, Blanchard-Keenan Company, Respondents

CONCLUSION AND ORDER

[fol. 29] 1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, initiated by the Secretary of Agriculture on his own motion. The respondents are registered market agencies engaged in the business of buying and selling in commerce livestock on a commission basis at the Union Stock Yards, Omaha, Nebraska, which has been found by the Secretary of Agriculture to be a "stockyard" as that term is defined in Title III of the Act, and due notice thereof given to the public. In accordance with the requirements of the Act the respondents had heretofore filed and put into effect a joint schedule of rates and charges for their services as market agencies. This schedule was designated as the "Omaha Live Stock Exchange Tariff No. 1," to which supplements had been filed from time to time in accordance with the provisions of the Act.

2. On the 16th day of January, 1926, the respondents filed and published, to become effective January 26, 1926, a new joint tariff designated as "Omaha Live Stock Exchange Tariff No. 2," said tariff providing for certain increases in rates and charges for their services as market agencies.

3. By an order dated January 25, 1926, the Secretary of Agriculture suspended the operation of Tariff No. 2 for

thirty days beyond the time when such schedule would otherwise have gone into effect, giving as the reason that the rates proposed by the respondents were not justified and were, in fact, unjust and unreasonable. By the same order the Secretary directed that a hearing upon the reasonableness and lawfulness of said schedule of rates and charges [fol. 30] be held at Omaha, Nebraska, beginning the 24th day of February, 1926. On February 20, 1926, the Secretary ordered a further suspension of Tariff No. 2 for thirty days and postponed the time of the hearing to March 25, 1926.

4. The hearing heretofore ordered was begun March 25, 1926, and continued until April 14, 1926. During the course of this hearing full information was developed relative to the operations of the respondent market agencies. The detailed facts were developed in regard to the methods of handling livestock from the time it enters until it leaves the stockyards. This evidence relates in particular to the character of service performed by the market agencies in the handling of livestock on a commission basis. This information includes the performance as to salesmanship, sorting, grading of livestock, and the accounting to owners for the proceeds from the sale of same. Evidence was also introduced bearing on the general livestock conditions affecting the Omaha market and the territory tributary thereto. The financial operations of each respondent market agency, its organization, and character and volume of business were produced in evidence. The respondent market agencies introduced little evidence in the case and made a motion for dismissal on the ground that the Government had not sustained the burden of proof. The respondent market agencies through their counsel appeared before the Secretary of Agriculture on the 25th and 26th days of October, 1926, and were given full opportunity for oral argument before the Secretary.

[fol. 31] 5. This inquiry brings into question the reasonableness and lawfulness of Tariff No. 2 of the above market agencies, with the purpose of prescribing a schedule of just, reasonable, and non-discriminatory rates and charges if those contained in Tariff No. 2 are found to be unlawful. The tariff is so complex that no succinct and exactly accu-

rate summary of its rates can be made. However, the following represents its basic rates:

Selling

		Min.		Max.	
	Head	SD	DD	SD	DD
Single Ownership:					
Straight:					
Cattle	$ .75	$16	...	$21	...
Calves	.35	16	$21	21	$27
Hogs	.25	12	17	14	22
Sheep	...	...	...	14	20
Mixed:					
Cattle	.80	...	...	21	...
Calves	.35	...	...	21	27
Hogs	.25	...	...	14	22
Sheep	.20	...	...	14	20
Total per car		16	21	25	27
		16	(C&C)	22	(C&C)
		17	(3 sp.)	27	(3 sp.)
Plural Ownership:					
Straight:					
Cattle	.80	17	...	21	...
Calves	.35	17	23	21	28
Hogs	.25	13	18	15	23
[fol. 32] Sheep	.20	14	20	16	22
Mixed:					
Cattle	$ .80	...	...	$21	...
Calves	.35	...	...	21	$24
Hogs	.25	...	...	15	23
Sheep	.20	...	...	16	22
Total per car		$16	$21	25	28
		17	(C&C)	24	(C&C)
		18	(3 sp.)	28	(3 sp.)
Drive-Ins:					
Cattle	.80				
Calves	.40				
Hogs	.28				
Sheep	.20				

Buying

Head	Min. SD	Min. DD	Max. SD	Max. DD
Cattle, Stocker, and feeder	...	.....	$15	
(Bought from 3 or more)	$ .75	$15 .00	18 .75	
Immediate slaughter	...	.....	12 .50	
(Bought from 3 or more)	.60	12 .50	15 .00	
Calves	.40	15 .00	18 .75	
Sheep	.20	11 .16	14	$20
Drive-out Sheep	.20	..	..	...
Hogs:				
Immediate slaughter	...	8 .10	..	...
Stockers	...	15 .25	..	...
Drive-Out	.20	..	..	...

6. The foregoing basis rates are subject in actual application to considerable modification by reason of the several exceptions and special charges and the minima and maxima provided for in the tariff. Such modifications are governed to quite an extent by the ownership of the livestock and the conditions under which it arrives, i. e., whether it is owned by those classes who enjoy the privilege of charges at lower than the usual rates and whether it comes in large or small numbers to the car or is driven or trucked in. Therefore, the average charges per car can only be ascertained with reasonable accuracy by an analysis of the actual application of the tariff to business done in the past. At the conclusion of the hearing, Tariff No. 2 had not been effective for a sufficient time to permit this, but Tariff No. 1, with its amendments, was in effect throughout the year 1925. Tariff No. 1 differs from Tariff No. 2 chiefly in that [fol. 33] rates under Tariff No. 2 are higher in the following instances and amounts, namely:

Kind of shipment	Head	Min. SD	Min. DD	Max. SD	Max. DD
Single Ownership:					
Straight Cars:					
Cattle	$ .05	$1 .00	.....	$2 .00	.....
Calves	.05	1 .00	....	1 .00	$1 .00
Hogs	.10	.....	...	.....	.....

Kind of shipment	Head	Min. SD	Min. DD	Max. SD	Max. DD
Mixed Cars:					
Cattle	.05	.....	.....	2.00	.....
Calves	....	.....	.....	1.00	1.00
Total per car	....	1.00	$1.00	.....	1.00
	....	1.00	(C&C)	.....	.....
					dec.
Three species	....	2.00	.....	2.00	.....
Plural Ownership:					
Straight Cars:					
Cattle	.05	1.00	.....	1.00	.....
Calves	....	1.00	1.00	.....	1.00
Mixed Cars:					
Cattle	.05	.....	.....	1.00	.....
Calves	...	.....	.....	.....	3.00
					dec.
Total per car	....	1.00	(C&C)	2.00	(C&C)
Three species	....	2.00	.....	3.00	.....

[fol. 34] 7. This case presents the problem of fixing rates for personal services in the rendition of which the value of property used is relatively small. There is a general concurrence in the proposition that the most nearly just and reasonable rates or prices are those fixed by the play of normal and reasonable competition. It is probably in recognition of this principle that public rate regulation, though not necessarily dependent upon, is generally found in association with a complete or partial absence of rate or price competition within the industry regulated or some local division thereof. These considerations lead to the conclusion that one of the primary objects of public rate regulation is to bring about within the industry, or division, rate conditions as nearly approximating those which would obtain under conditions of normal reasonable competition as is possible. The conclusion raises the question as to what factor or factors control the final determination of rates under normal competitive conditions.

8. Experience demonstrates that under such conditions the price or rate tends to become that price or rate which represents the normal cost of producing the article or rendering the service, plus a reasonable profit thereon. There-

fore, the present problem is approached with the thought that commission rates yielding a reasonable profit above the normal cost of rendering the service are reasonable.

[fol. 35] 9. It is a fact well known and shown by the record in this case tht of the firms and corporations engaged in the live stock commisison business on the Omaha Union Stock Yards in 1925, 68 are respondents in this proceeding who have by agreement eliminated rate competition among themselves and substituted therefor rates fixed by agreement among themselves without consulting with the shippers and others who pay these rates. This would seem to be a sufficient answer to the respondent's contention that it is impossible to fix just and reasonable rates for the services here under consideration. If the owners of the 68 firms and corporations composing the respondents can, through a committee, or by whatever other machinery they see fit to adopt arrive at the rates to be charged the shippers, a disinterested Governmental agency can fairly arrive at such rates.

10. The respondents make the further contention that rates may not fairly be ascertained unless the varying degrees of ability, application and business experience, skill, etc. of the respondents are taken into consideration. This question has been answered by the respondents themselves, in that they have, by requiring each to charge the same rates regardless of individual efficiency, placed themselves on the same level.

11. Approaching the problem with the foregoing considerations in mind, it becomes necessary to select some representative period over which to study the operations of the Omaha live stock market and of the respondents thereon. The calendar year is recognized as the proper accounting period inasmuch as it includes all the seasonal fluctuations [fol. 36] in the live stock receipts. The calendar year 1925 lay closest to this inquiry. The selection of an unusually low volume year is possibly not entirely fair to the shippers and a more extended period would have been more representative from the standpoint of the yearly fluctuation of receipts. However, the further the period is extended into the past the greater is the diversion from the present cost of doing business. The fewer also are the

present commission firms who were engaged therein. In addition to the detailed information introduced relative to the business of the respondents for the calendar year 1925, as many facts as practicable pertaining to the prior and subsequent periods were introduced.

12. It was found that the volume of business handled by each of the respondents ranged from 15 cars of rail receipts and purchases and 27,641 head of other sales and purchases to 5,965 cars of rail receipts and purchases and 30,190 head of other sales and purchases. Merely to render more convenient the discussion of the conditions under such a wide range, the respondents were divided into volume groups based upon the relative volume of rail receipts, as follows:

Group A, each firm of which handled above 3,500 cars of livestock.

Group B, each firm of which handled between 2,000 and 3,500 cars of livestock.

Group C, each firm of which handled between 1,000 and 2,000 cars of livestock.

Group D, each firm of which handled between 500 and 1,000 cars of livestock, and

Group E, each firm of which handled less than 500 cars of livestock.

[fol. 37] The record shows that at the end of each calendar year indicated the number of market agencies, exclusive of those doing order buying only, was as follows:

1921	56
1922	56
1923	57
1924	55
1925	51

In 1925 receipts by rail were divided among the 61 firms as follows:

Group A, 8 firms, handling above 3,500 cars, received 37%.

Group B, 7 firms, handling 2,000 to 3,500 cars, received 18%.

Group C, 17 firms, handling 1,000 to 2,000 cars, received 27%.

Group D, 18 firms, handling 500 to 1,000 cars, received 15%.

Group E, 11 firms, handling under 500 cars, received 3%.

Cumulatively, the above information may be expressed as follows:

Group A	8	firms	handled	37%	of rail	receipts.
Groups A and B	15	"	"	55%	" "	"
" A, B, and C	32	"	"	82%	" "	"
" A, B, C, and D	50	"	"	97%	" "	"
" A, B, C, D and E	61	"	"	100%	" "	"

The average owner income, by which is meant the amount of money which the owner or owners had left for personal use after paying the expenses of conducting the business, whether this income was received in the form of drawings, salaries, or profits, or any or all combined, was as follows:

[fol. 38]

Group A	$12,687	Average per owner.
" B	8,335	" " "
" C	6,197	" " "
" D	4,221	" " "
" E	2,350	" " "

(Each branch house is considered as one owner.)

13. An analysis of the business of the respondents as disclosed by the audits of their books, introduced in evidence, shows the following facts as to gross commissions per car by species, resulting from the application of Tariff No. 1 to 1925 rail receipts:

Species	Group	Lowest average gross commission of any firm	Highest average gross commission of any firm	Average gross commission of all firms
Cattle	A	$18.45	$18.98	$18.63
	B	18.27	21.21	19.60
	C	18.43	19.84	19.15
	D	17.70	20.09	18.57
	E	16.77	19.48	19.16
Average for market				18.96
Hogs	A	14.37	16.69	15.26
	B	14.27	15.47	14.95
	C	14.28	17.60	15.00
	D	14.28	15.81	14.79
	E	13.35	14.75	14.47
Average for market				15.00

The application of Tariff No. 2 to 1925 rail receipts would increase these gross commissions somewhat.

[fol. 39]

Species	Group	Lowest average gross commission of any firm	Highest average gross commission of any firm	Average gross commission of all firms
Sheep	A	$17.48	$19.98	$19.67
	B	17.79	21.25	19.61
	C	14.00	20.92	19.85
	D	14.00	23.06	19.17
	E	14.00	19.63	18.56
Average for market				19.65

14. Inasmuch as several of the respondent firms operate entirely through employees whose salaries are fixed by bargaining and appear on the books as operating expenses, while many of the firms operate partially or entirely through owners whose salaries, when set up on the books at all, represent drawing accounts rather than bargained salaries, and in many instances do not appear on the books, it is impossible to contrast with the above stated per car commissions the cost of rendering the service, either as to individual firms or volume groups, without a distortion which renders the contrast valueless. Therefore, it becomes necessary to set up, as to each of the three species, an account showing the normal and reasonable cost per car of rendering the service. Such accounts are drawn from the whole record, but in determining the various items, averages, as they are generally understood, are not used. In each instance the figure adopted is a normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management of their business.

[fol. 40] 15. In setting up the individual cost accounts from which the above described normals are drawn, all expenses are allocated directly to the three species where possible. In instances, such as overhead, advertising, etc., where it is not possible to allocate directly, allocation is made on the basis of gross income.

16. The foregoing applies particularly to costs other than salesmanship. The cost of salesmanship per car is arrived at in the following manner: A number of the respondents who were questioned as to the number of cars of each species

of livestock that an ordinarily efficient salesman of the particular species could sell in a reasonably efficient manner in one year did not express an opinion. A shipper who is frequently on the market at Omaha testified that such a cattle salesman could so sell from 2,000 to 3,000 cars and such a hog salesman could so sell from 2,500 to 3,500 cars, provided each had opportunity for the full exercise of his ability. No witness expressed an opinion as to the number of cars of sheep an average salesman could handle efficiently in one year, but a sheep salesman stated that on a Monday during the hearing he sold ten cars and during that week twenty cars, though receipts were not then as large as they had been, and he could have sold more.

17. By reason of the greater volume of the firms composing Group A, who had an average of 2,959.5 cars of cattle and 1,643.4 cars of hogs, the 25.4 cattle salesmen in that group who sold its 23,676.3 cars of cattle, and the 14.1 hog [fol. 41] salesmen who disposed of its 13,147.6 cars of hogs, had the largest opportunity to display their ability as to those species. The average of the salesmen in each of these classes was, respectively, 932 cars of cattle and 932 cars of hogs. While the eight firms composing Group A sold 4,610.7 cars of sheep, or an average of 576.3 cars per firm, as against the total of 3,028.2 and the average of 178.1 cars handled by the 17 firms composing Group C, Group A employed the services of eight sheep salesmen and Group C only four. The four had, therefore, the largest opportunity to display their ability and they sold an average of 757 cars. In the computations relating to the ability of a salesman, the volume used is found by adding to the number of cars of each species arriving by rail the number of car equivalents found by dividing truck-in receipts, drive-in receipts, and yard sales of cattle, hogs and sheep, by 27, 70 and 225 respectively.

18. The salaries and drawing accounts of approximately 50 per cent of all cattle salesmen, employee and owner, on the Omaha market in 1925 ranged between $3,000 and $5,000 per year. Only four of the 39 employee cattle salesmen received $5,000 or more; 16 of these 39 received less than $3,000. Of the 9 employee sheep salesmen only three re-

ceived salaries of $5,000 or more; four of these 9 received less than $4,000 a year. Of the 25 employee hog salesmen only five received salaries of more than $4,000; 15 of these 25 received less than $3,000 per year. Only 11 of the 27 owner cattle salesmen and 1 of the 3 owner sheep salesmen allowed themselves salaries of more than $5,000, and only 8 of the 14 owner hog salesmen fixed their own salaries at $4,000 or more. Therefore, $5,000.00 per year as to cattle [fol. 42] and sheep, and $4,000 per year as to hogs is considered to be the fair market value of the services of a good salesman in those respective lines. Upon the foregoing bases it is considered that a reasonable cost per car for salesmanship is $5 for cattle, $3 for hogs and $5 for sheep.

19. A sharp point of controversy between the producers' representatives who testified at the hearing and the respondents revolved around certain forms of advertising, especially the practice of the respondents of sending to patrons free subscriptions to the market paper. No attempt is made to decide what business-getting methods the respondents should employ or what proportion of their expenditure for this purpose they should devote to any method. The question is approached with the view of determining what is a reasonable amount to expend for business getting.

An analysis of the expenditures for business getting of the various groups gives the following result:

Group	Lowest percentage of gross commissions spent for business getting	Highest percentage of gross commissions spent for business getting	Average percentage of gross commissions spent for business getting
A	11.96%	29.99%	17.56%
B	9.57	16.51	12.96
C	4.27	22.81	14.31
D	4.51	28.73	12.16
E	1.95	26.48	11.60
Average for all respondents			14.85

The expenditures from which the above percentages were [fol. 43] calculated do not include solicitors' salaries, which have been accounted for elsewhere. Considering the amounts actually spent for business getting as shown above,

the attitude of the producers of live stock toward the expenditures for this purpose, and in view of the fact that a very substantial part of the expenditure does not result in bringing new business to the market, but in shifting consignments from one commission man to another, and because of the fact that the stockyards company also undergoes expenditures for advertising, all of which whether made by commission men or stockyards companies must ultimately be borne by the producers of livestock, 10% of gross commissions received is a reasonable expenditure for business getting. Ten per cent of the average gross commissions of $18.96 from cattle, $15.00 from hogs and $19.65 from sheep, in 1925 amounts to $1.89 per car for cattle, $1.50 for hogs and $1.96 for sheep. The amounts included in the cost account for business getting are $2.00 for cattle, $1.50 for hogs and $2.25 for sheep, the last named figure being explained by the large percentage of sheep which comes in double-deck cars.

20. The business done by the respondents is personal service and not capitalistic, though some capital is desirable to enable them to handle their remittances expeditiously, and for office equipment. All of this is included in their aggregate net worth as of December 31, 1925, of $771,571, which represents the aggregate capital devoted to both the livestock loan, and the livestock commission [fol. 44] business. However, as no exact segregation can be made, interest at 7%, amounting to more than $54,000, has been calculated on the whole. This distributed over the number of cars handled by the respondents represents approximately 50¢ per car, and is included in the cost account.

Summarized, the cost account, which represents the reasonable cost of selling in the year 1925 on the Omaha market a car of cattle, one of hogs, and one of sheep, is as follows:

Item	Cattle	Hogs	Sheep
Yardmen's Salary	$1.75	$1.50	$1.50
All other salaries	2.00	1.60	1.80
Travel, Entertainment, Advertising, etc.	2.00	1.50	2.25
Overhead, including increased rental of $54,000	1.75	1.50	1.75

Item	Cattle	Hogs	Sheep
Exchange Assessments and Dues	.25	.25	.25
Total	$7.75	$6.35	$7.55
Salesmanship	5.00	3.00	5.00
Interest	.50	.50	.50
Total Cost	$13.25	$9.85	$13.05

[fol. 45] Combining the average gross commissions received and the reasonable expense of selling a car of livestock as heretofore determined, the following profit and loss statement for each species results:

	Cattle	Hogs	Sheep
Average gross commissions per car	$18.96	$15.00	$19.65
Reasonable expense per car	13.25	9.85	13.05
Profit	5.71	5.15	6.60
Ratio of profit to gross commissions	30.1%	34.3%	33.5%
Ratio of profit to cost	43.0%	52.3%	50.6%

[fol. 46] These profits result after a cost account which compensates for out-of-pocket costs, including insurance of practically all risks except that of procuring business, for the services of owners, whether as salesmen or managers except the service of general supervision, and for interest on a much larger capital than that employed in the commission business.

21. By reason of the fact that the producers of livestock so frequently market their product at a loss, it is somewhat difficult to contrast the profits of the respondents with those of their patrons. However, the producers seem to consider as a good profit one of $100 on a car of fat cattle costing between $2,000 and $2,500 to produce and market. This represents a profit of 4% to 5% on cost. Since 1920 the financial conditions of the range cattle industry has been very precarious. Many of the producers are bankrupt. Since 1925 there has been a slight improvement, but the condition at the time of the hearing was still very bad.

22. The respondents acting together through their exchange exercise the monopolistic power of fixing charges arbitrarily without the usually attendant economy of minimizing expenditures for business getting. This results in a fierce competition for business, the cost of which is reflected in the rates arbitrarily made. When rates so fixed in a business which has been subjected to public regulation yield the percentages of profit hereinbefore shown, they are unreasonable per se.

23. In addition to the basic altitude of the rates in Tariff No. 2, that tariff is unnecessarily complicated. It is difficult [fol. 47] for the shipper to understand, and in frequent instances, difficult for experienced employees of the respondents to apply. Due largely to the presence of the minima in its schedules, its application is frequently inequitable. For instance, it is not disputed that driven-in cattle are more expensive to sell than those arriving by rail, yet the commission on 18 cattle in a car is $16.00, while on the same number driven-in it is $14.40. Driven-in hogs are sold in a division separate from the regular hog division, requiring the salesman to leave the regular division to dispose of his firm's hogs in the drive-in division, and in some instances where the volume is large, requiring an extra salesman in that division; yet on 40 head arriving by rail the charge is $12.00, while on the same number driven-in the charge is $11.20, and this differential increases as the number diminishes. There is a further inequity in the application of maximum and minimum charges. Usually the number of head of finished cattle in a car is smaller than the number of stockers and feeders or cattle of less desirable grades. The maximum charge applies with the increased number of head in a car. Therefore, the result is that the producers of stockers and feeders usually pay higher rates of commission than the producers of fat cattle. By reason of this provision in Tariff No. 1, its rates fell most heavily upon that class of cattle which sells at the lower prices, and the inequity is accentuated in Tariff No. 2 by a further increase of the maximum rate.

24. A car containing cattle and calves constitutes, under a provision of Tariff No. 2, a mixed car, upon which the maximum is $22.00 as against the maximum of $21.00 on

straight cars of cattle or single-deck cars of calves. The [fol. 48] distinction is one of weight only, cattle weighing less than 425 pounds being defined as calves. Therefore, a car so badly mixed as to kinds and grades of cattle as to come within the trade term of "jackpot"—for example, some old cows, some bulls, some fat steers, some stockers, etc.—and requiring a great deal of sorting would sell for a lower maximum commission than a straight car of heifers ranging in weight from 400 to 500 pounds.

25. Tariff No. 2 does not apply uniformly to all shippers, but makes arbitrary distinctions not based upon differences of cost or labor in handling the same class of livestock. The most outstanding example of this is the provision which allows half commission to regular yard traders and exchange members. When a trader places livestock with a commission man for sale, it is said to be "planted," while arrivals from the country are termed "fresh stuff." All the evidence is that planted livestock is harder to sell than fresh stuff, not only because of a certain prejudice of buyers against "stale" livestock, but also because the trader often fixes a price which cannot be obtained.

26. In view of all of the foregoing and on the basis of the entire record, and giving due consideration to the risk of procuring business, general supervision of the business, and unusual incidental expenses such as the moving in 1926, the Secretary of Agriculture is of the opinion and finds that the rates and charges shown in Tariff No. 2 are unjust, unreasonable, and discriminatory.

[fol. 49] 27. The cost accounts hereinbefore described represent a normal of a whole which includes the expense of handling all cattle, all hogs and all sheep which arrive at the Omaha market consigned to the respondents. Therefore, using them as the basis for commission rates on straight cars of single ownership, and then increasing those rates in case of mixed cars, plural ownership and the like, results in the establishment of all rates on a higher basis than strict justice requires. However, that method is here pursued. The basic rates are calculated on the character of receipts that constitute the backbone of the market, namely, straight cars, single ownership, single decks of cattle, and hogs, and straight cars, single ownership, double

decks of sheep. An ideal rate schedule would be one which is simple and clear and yet provides for every exceptional contingency which may arise in the marketing of livestock. However, attempts to provide for every contingency necessarily result in complexity and obscurity and fail of attainment because the contingencies are too varied accurately to be foreseen. In view of this, it is deemed advisable to make the schedules simple and clear and also equitable when applied to the usual and ordinary course of marketing.

Upon the basis of all the foregoing and the entire record, the Secretary of Agriculture determines that the following are schedules of just and reasonable charges:

[fol. 50] Selling Schedules

	Head	Single deck	Double deck
Straight Cars:			
Cattle		$15.00	.....
Calves		15.00	$18.00
Hogs		12.00	18.00
Sheep		12.00	18.00
Mixed Cars:			
Cattle	60¢	15.00	.....
Calves	30¢	15.00	18.00
Hogs	25¢	12.00	18.00
Sheep	20¢	12.00	18.00

Prorating.—In the case of those cars where prorating is necessary or requested, an additional charge of 30¢ for each such proration. Minimum 60¢ and maximum $3.00 on any one car. When individual statements are requested, a charge of 5¢ extra for each statement.

Drafts.—In the case of those cars where more than three drafts are necessary or requested, 25¢ per draft in excess of three, maximum $3.00 on any one car.

Yard Sales.—

Cattle 60¢ per head, with a maximum of $15.00 up to and including each 30 head.

Calves 30¢ per head, with a maximum of $15.00 up to and including each 60 head.

Hogs 25¢ per head, with a maximum of $12.00 up to and including each 70 head.

[fol. 51] Sheep 20¢ per head, with a maximum of $12.00 up to and including 150 head and 20¢ per additional head above 150, with a maximum of $18.00 up to and including each 300 head.

Drive-ins.—

Cattle 70¢ per head.

Calves, 425 pounds and below, 35¢ per head.

Hogs 30¢ per head.

Sheep.—On each 300 head of sheep or fraction thereof in one consignment, the rates shall be determined as follows: 20¢ per head, with a maximum of $12.00, up to and including 150 head; 20¢ per additional head above 150, with a maximum charge of $18.00, up to and including each 300 head.

Buying Schedule

Stocker and Feeder Cattle:

For purchasing stocker and feeder cattle $15.00 per car. When necessary to purchase and pick up a car from more than two owners, 50 cents per additional lot over two, maximum charge $18.00.

Cattle for Immediate Slaughter:

For purchasing cattle for immediate slaughter $12.50 per car. When necessary to purchase and pick up a car from more than two owners, 50 cents per additional lot over two, maximum charge $15.00.

[fol. 52] When cattle are purchased for immediate slaughter for outside packers by their own buyers, market agencies merely clearing such transactions, $5.00 per car.

Calves:

Cattle schedule to apply. Cattle weighing less than 425 pounds considered calves.

Sheep:

For purchasing sheep $12.00 per single deck and $18.00 per double deck car. When double decks of sheep are purchased upon order and single deck cars are furnished by the carrier for any reason, the commission charges to be based upon the double deck rate.

For purchasing each 300 head of sheep or fraction thereof on one order to be driven or hauled out, the rates to be determined as follows: 20 cents per head with a maximum of $12.00, up to and including 150 head, and 20 cents per additional head above 150 with a maximum of $18.00, up to and including each 300 head.

Hogs

Stocker and Feeder Hogs:

Single deck $12.00; double deck $18.00.

For purchasing each 150 stock hogs or fraction thereof on one order to be driven or hauled out, the rates to be determined as follows: 20 cents per head, with a maximum of $12.00 up to and including 75 head, and 20 cents per additional head above 75 with a maximum of $18.00 up to and including each 150 head.

Other Hogs:

[fol. 53] For purchasing other than stockers and feeders $8.00 per single deck and $10.00 per double deck car.

For purchasing each 125 head or fraction thereof of hogs on one order to be driven or hauled out, the rates to be determined as follows: 20 cents per head, up to and including 70 head, with a maximum charge of $8.00; and 20 cents per additional head above 70, with a maximum of $10.00 up to and including each 125 head.

For purchasing any livestock to be shipped in one car for more than one person, an additional charge of 25 cents per purchaser to be made.

All livestock purchased, or paid for, or ordered out, or as to which assistance has been rendered by a market agency, its agents, or employees, whether made by or for a speculator, yard trader, farmer, or other person, to be deemed a purchase and charged for at the above rates.

A market agency may order out entire shipments of stock when it has sold to the shipper 50 per cent or more thereof.

Order

It is ordered that the respondent market agencies, and each and every of them, on and after the first day of January, 1927, cease and desist from demanding or collecting

for any stockyard service the rate or charge shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 16th day of January, 1926, and designated and known as "Omaha Live Stock Exchange Tariff No. 2."

It is further ordered that on and after January 1, 1927, neither the respondent market agencies nor any of them shall publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rate [fol. 54] or charge hereinbefore determined to be just, reasonable and non-discriminatory for the furnishing of such service.

It is further ordered that at least ten days prior to the first day of January, 1927, each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule effective January 1, 1927, showing all rates and charges for the stockyard services furnished by such respondent at the Omaha Union Stockyards, South Omaha, Nebraska, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable and non-discriminatory for such service.

It is further ordered that a copy of this order be transmitted by registered mail to each and every of the respondent market agencies.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 19th day of November, 1926.

W. M. Jardine, Secretary of Agriculture. (Seal United States Department of Agriculture.)

Endorsed: Filed Jan. 17, 1927. R. C. Hoyt, Clerk.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY INJUNCTION—Filed Dec. 31, 1926

This cause coming on to be heard this 31st day of December, 1926, before three Judges of the Eighth Judicial Circuit, under the provisions of the Act of Congress, known as the District Court Jurisdiction Act of October 22, 1913, upon motion of the plaintiffs herein for a temporary injunction, as prayed in their petition hereinbefore filed; and the parties to this cause appearing in open court by their counsel and the court having duly considered the statements of said counsel and being now advised in the premises; and all said parties, in order to obtain an early and final determination of the issues presented in this cause, through their said counsel now and hereby consenting to the entry of this order; now, therefore,

It is ordered that the defendants, William M. Jardine, Secretary of Agriculture of the United States, John G. Sargeant, Attorney General of the United States and James C. Kinsler, United States Attorney for the District of Nebraska, and each of them, their successors, officers, employees and agents be and they are hereby enjoined and restrained, until the further order of this court, from enforcing or attempting to enforce or to put into operation, any rates, tariffs, or charges in respect to the services of plaintiffs herein as market agencies, operating upon the Union Stockyards of Omaha, Nebraska, based on a certain order promulgated by defendant, William M. Jardine, as Secretary of Agriculture, November 19, 1926, [fol. 56] Docket No. 143, in re The Secretary of Agriculture v. American Live Stock Commission Company, et al.; and from instituting or prosecuting any proceedings of any kind to enforce against plaintiffs, their officers, agents or employees or any of them any fines or penalties for failure to comply with any order or orders of defendants, based upon said order of November 19, 1926.

The right is reserved to the defendants to apply to the Hon. Joseph W. Woodrough, United States District Judge for the District of Nebraska, for an order which will guar-

antee the repayment by plaintiffs to their patrons of any charges collected by them during the pendency of this litigation in this Court and upon appeal, in excess of the rates fixed by the Secretary of Agriculture in his said order of November 19, 1926, in the event that said rates are finally sustained. And the said Judge shall have power to make such order in the premises as, after hearing of both parties, seems to him equitable.

Upon the full observance by plaintiffs, respectively, of such order, if and when issued, the continuance of this temporary injunction as to each of such plaintiffs, respectively, is hereby conditioned. The term "plaintiffs" wherever used in this order shall include all market agencies affected by the aforesaid Secretary's order.

Robt. E. Lewis, Circuit Judge; J. W. Woodrough, District Judge; Geo. C. Scott, District Judge, Counsel for Defendants.

We hereby consent to the entry of the above order.

Wm. J. Donovan. William J. Donovan, Assistant to the Attorney General; H. B. Teegarden, Special Assistant to the Attorney General; James M. Beck, Counsel for Plaintiffs. Francis A. Brogan, for Plaintiffs.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Jan. 21, 1927; refiled March 15, 1927

Come now the defendants in the above entitled cause and make answer to the petition of plaintiffs hereinbefore filed, as follows:

1. Admit the allegations contained in Paragraphs 1 to 4, inclusive, of said petition.

2. Admit the allegations contained in Paragraph 5 of said petition, except that they deny that the arbitration

proceedings referred to therein were conducted under the immediate direction of the then Secretary of Agriculture, and allege that the said proceedings were the outgrowth of a proceeding before the Secretary of Agriculture entitled American Live Stock Association, et al. v. Omaha Live Stock Exchange, et al., Docket Nos. 11, 12 13 and 14, originating upon complaints of various private complainants; that said arbitration was conducted upon the suggestion and agreement of the private parties to said proceeding, and the persons who served as arbitrators therein were chosen and agreed upon by said private parties and did not serve in any official capacity which they may have possessed under the Government of the United States, but purely by virtue of their selection by agreement of the parties to said proceeding; that the then Secretary of Agriculture merely gave his approval to said plan of arbitration as a mode of compromise and settlement of said [fol. 58] proceedings, agreeable to the parties thereto.

3. Admit the allegations contained in Paragraphs 6 and 7 of said petition.

4. Say that the allegations contained in Paragraph 8 of said petition concerning the contents of the Secretary's order of November 19, 1926, referred to therein, are not full, complete or accurate statements of the contents of said order; that said order is a matter of record in this suit, and defendants pray that reference be made and had thereto as to the contents, meaning and legal effect thereof.

5. Say that the allegations contained in Paragraphs 9, 10 and 11 of said petition are conclusions of law and, therefore, do not require an answer, but nevertheless deny that the order of the Secretary of Agriculture, referred to in Paragraph 9, is illegal or void for the reasons stated in the following Paragraphs of said petition, or for any other reason.

6. Answering paragraph 12 of said petition, the defendants, while saying that many of the allegations therein contained are either conclusions of law which require no answer, or statements of fact irrelevant to the validity of the Secretary's order and to this suit which need be neither admitted nor denied, nevertheless admit that the schedule

of rates adopted in the Secretary's order of November 19, 1926, will result in an aggregate reduction in the gross returns received by market agencies affected thereby, but deny each and every other allegations in said paragraph contained; and allege that the said Secretary's order, while reducing the rates chargeable by plaintiffs in certain cases, increases those chargeable by them in others, so that the amount of reduction in aggregate gross returns receivable under the rates fixed by the said Secretary's order, as compared with those receivable under [fol. 59] Tariff No. 1 or Tariff No. 2, is grossly exaggerated by plaintiffs' allegations in said paragraph contained.

7. Answering the first sub-paragraph of Paragraph 13 of said petition, defendants say that the allegations therein contained are inadequate and erroneous statements of the legal effect of evidence presented at the hearing, referred to therein, and contained in record of proceedings before the Secretary of Agriculture, entitled Secretary of Agriculture v. American Live Stock Commission Company, et al., Docket No. 143; that, as such, said allegations are statements of conclusions of law and therefore do not require an answer; that said allegations are furthermore irrelevant and immaterial to the validity of the aforesaid order of the Secretary of Agriculture and to this suit, and therefore need be neither admitted nor denied. But the defendants nevertheless deny said allegations in said Paragraph containd and each and every one of them; and said defendants further allege that evidence was presented at said hearing sufficient to warrant said Secretary's finding that the schedule of rates contained in Omaha Live Stock Exchange Tariff No. 2, were unjust, unreasonable and discriminatory.

8. Answering the second sub-paragraph of Paragraph 13 of said petition the defendants say that the same is apparently incomplete and not sufficiently clear in meaning in its present form to permit an answer, in that it does not sufficiently identify the evidence referred to therein. If, however, it was intended by plaintiffs therein to allege that the evidence presented at said hearing regarding the schedule of rates prescribed by the said Secretary's order of November 19, 1926, was not sufficient to establish that

they would adequately compensate the market agencies for the services rendered by them and for the disbursements made in rendering such services, then the defendants answer and say that said allegation is an inadequate and erroneous statement of the meaning and legal effect of [fol. 60] evidence taken at said hearing and contained in record of proceedings hereinabove referred to, and as such is a statement of legal conclusions and does not require an answer; that said allegation is furthermore immaterial to the validity of the Secretary's order and to this suit and, therefore, need be neither admitted nor denied. The defendants nevertheless deny that the evidence presented at said hearing regarding the schedule of rates fixed by said Secretary was not sufficient to establish that they would adequately compensate the market agencies for the services rendered by them and for disbursements made in rendering such services, and furthermore allege that evidence was presented to the said Secretary at said hearing which warranted him in fixing the schedule of rates and charges prescribed by him in his conclusions and order of November 19, 1926.

9. Answering Paragraph 14 of said petition, the defendants say that the allegations therein contained are conclusions of law, and, therefore, do not require an answer; but nevertheless deny that the aforesaid order of the Secretary of Agriculture violates the Fifth Amendment to the Constitution of the United States for the reasons therein given or for any other reasons.

10. Answering Paragraph 15 of said petition defendants admit only that the Secretary of Agriculture proposes to enforce the aforesaid order by appropriate penalties selected from those authorized by the Packers and Stockyards Act, 1921, and by other Acts of Congress relating to his authority in the premises; and deny each and every other allegation of said Paragraph, describing the particular penalties which plaintiffs allege the Secretary proposes to impose.

11. Answering Paragraph 16 of said petition defendants say that the allegations therein contained are irrelevant [fol. 61] and immaterial to the validity of the Secretary's order aforesaid and to this suit, and therefore need be

neither admitted nor denied; but nevertheless deny that plaintiffs have uniformly dealt fairly with their patrons, and deny that they have not imposed, collected or received from said patrons any unjust, unreasonable or unfair commission or charges for their services; and furthermore deny that the enforcement of the aforesaid Secretary's order would cause the business of plaintiffs or of other market agencies to be destroyed or would prevent them from continuing and carrying on the business relations therein described.

12. Answering Paragraph 17 of said petition plaintiffs say that the allegations therein contained are conclusions of law and, therefore, do not require an answer.

13. Answering Paragraph 18 of said petition plaintiffs invite the court's attention to the order for temporary injunction during the continuance of this litigation, hereinbefore entered upon the consent of the parties, and say that the allegations in said paragraph contained have by said order been rendered irrelevant and immaterial to this suit, and, therefore, do not require an answer.

Wherefore, defendants pray that the plaintiffs' petition in this action be dismissed and that the defendants herein be awarded their costs and disbursements in this action.

James C. Kinsler. James C. Kinsler, United States Attorney. Wm. J. Donovan. William J. Donovan, Assistant to the Attorney General. H. B. Teegarden. H. B. Teegarden, Special Assistant to the Attorney General.

[fol. 62] Service of the foregoing answer is hereby acknowledged.

Francis A. Brogan, January 21, 1927; —— ——, January —, 1927; —— ——, January —, 1927, Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDMENT TO PETITION—Filed March 1, 1927; Refiled March 15, 1927

Come now the defendants in the above entitled cause and make answer to the amendment to plaintiff's petition hereinbefore filed, as follows:

1. Answering plaintiff's amendment to paragraph 14 of their petition, the defendants allege that the allegations therein contained are conclusions of law which require no answer, but nevertheless deny that any part of Title III of the Packers and Stockyards Act, 1921, is null and void for the reasons alleged in said amendment, or for any other reason.

James C. Kinsler. James C. Kinsler, United States Attorney. Wm. J. Donovan. William J. Donovan, Assistant to the Attorney General. H. B. Teegarden. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing answer to amendment to plaintiff's petition is hereby acknowledged, this 1st day of March, 1927.

Francis A. Brogan, Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDED PETITION—Filed March 15, 1927

Come now the defendants and make answer to plaintiffs' amended petition hereinbefore filed, as follows:

1. For answer to all portions of said amended petition excepting the second sub-paragraph of paragraph 13 thereof, defendants respectfully refer the court to their

answer to plaintiffs' original petition, hereinbefore filed, with the exception of paragraph 8 of said answer.

2. Answering the second sub-paragraph of paragraph 13 of said petition, as amended, the defendants say that said allegation is an inadequate and erroneous statement of the meaning and legal effect of evidence taken at the aforesaid hearing before the said Secretary of Agriculture, and contained in record of proceedings entitled Secretary of Agriculture v. American Live Stock Commission Company, Docket #143; and as such is a statement of legal conclusions and does not require an answer. The defendants nevertheless deny that the evidence presented at said hearing was not sufficient to establish that the schedule of rates and charges prescribed by the said Secretary in his order of November 19, 1926, would adequately compensate the market agents for the services rendered by them and for the disbursements made in rendering such services; and defendants furthermore allege that evidence was presented to the said Secretary at said hearing which warranted him [fol. 65] in fixing the schedule of rates and charges prescribed by him in his conclusions and order of November 19, 1926.

James C. Kinsler. James C. Kinsler, United States Attorney. Wm. J. Donovan. William J. Donovan, Assistant to the Attorney General. H. B. Teegarden. H. B. Teegarden, Special Assistant to the Attorney General.

Service is hereby acknowledged this 15 day of March, 1927.

Francis A. Brogan, Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 66] In United States District Court

[Title omitted]

Motion to Refer to Master—Filed March 14, 1927

Come now the petitioners, and move the Court to refer the issues in the above entitled cause to a master to hear

the evidence and report his conclusions to this Court for further action by the Court.

This application is based upon the following grounds:

1. The issues in this proceeding involve the examination of the testimony presented to the Secretary of Agriculture on the hearing of the proceeding before him, consisting of the testimony of more than three dozen witnesses reported in eight volumes of testimony of substantially two hundred typewritten pages each, the taking of which extended over a period beginning March 25, 1926 and ending April 14, 1926, and the examination of substantially one hundred exhibits, and fifty-nine audits of the accounts of the commission firms at the Omaha market for the entire year 1925.

2. It involves also the consideration of expert accountants' deductions from the audits which it was stated in the hearing before the Secretary occupied the time of experts in the employ of the Department of Agriculture for substantially three months, and has occupied the time of [fol. 67] expert accountants employed by these petitioners since the making of the Secretary's order of November 19th, for a period of more than three months, and a comparison of the schedules prepared by these respective accountants. These audits were made and the analysis of them carried out for the purpose of ascertaining the volume of business at the Omaha market, the amount of gross commissions received by the commission firms under the schedules in effect in the year 1925, the cost of transacting the business, and the details of the various items of cost, and a comparison of the net earnings of the fifty-nine commission firms under the schedules in effect in 1925 with the net earnings under the reduced rates prescribed by the Secretary of Agriculture by his order aforesaid.

3. In addition to the examination and analysis of the testimony and exhibits and audits presented to the Secretary, additional testimony and additional audits must be presented and made for the purpose of determining the effect of the Secretary's order on the business of 1926 and its continuing effect on the business of 1927.

4. It will be necessary to take the testimony of a large number of the commission men now engaged in the business for the purpose of showing that under the application of

the rates prescribed by the Secretary of Agriculture they will be unable to continue in business, but will be driven out of business.

5. It will be necessary to take the testimony of a very large number of the shippers of livestock to the Omaha market for the purpose of showing that they were and are satisfied with the rates charged by the Commission firms in the year 1926, and for the purpose of showing the injury to the livestock business which will result from the application of the Secretary's order and the consequent deterioration in the quality of service to be rendered at the Omaha [fol. 68] market by the commission men operating there.

James M. Beck, Francis A. Brogan, Attorneys for Petitioners.

Duly sworn to by Francis A. Brogan. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE—March 15, 1927

This day this proceeding came on to be heard before Honorable Robert E. Lewis, Circuit Judge, Honorable Joseph W. Woodrough and Honorable George C. Scott, District Judges, pursuant to statute, upon the motion of the petitioners to refer the issues in the pleadings to a master and for an order to the master to take additional testimony and other evidence to be offered by the parties and thereupon, the parties appeared by counsel and the said motion was argued and submitted.

Upon consideration, and it appearing to the court that the testimony taken before the Secretary of Agriculture upon the hearing conducted by him is very voluminous and includes a number of audits and accounts, and an examination of it would require the investigation of the accounting conducted by the representatives of the Secretary of Agri-

culture in the audits of the books of the market agencies [fol. 70] affected by the order in issue in this proceeding, and it appearing also that the petitioners claim a right to offer additional evidence in support of their contention and that on account of other engagements the members of the court will be unable to give the time necessary to examine the said evidence and the said accounts, it is

By the Court ordered that the motion for a reference be sustained, to which ruling the respondents except. And it is further

Ordered that the issues in the pleadings in this proceeding be referred to B. H. Dunham, Esq. of Omaha, to take the testimony and report the same with his findings and conclusions of fact to this court for its further determination. The said referee shall have power to rule upon the admission and exclusion of evidence, subject to the court's review of same. It is further

Ordered that the petitioners deposit with the Clerk of this court the sum of $1,000.00 to be applied upon the costs of the reference.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF ADDITIONAL PARTIES—Filed June 16, 1927

Come now C. A. Oss, doing business under the name and style of American Live Stock Com. Co.; R. R. Keenan and B. B. Blanchard, partners as Blanchard & Keenan; Frank E. Bliss, doing business under the name and style of Bliss & Son; Frank C. Bliss, Frank F. A. Wellman and Clair H. Hopkins, partners as Bliss-Wellman & Hopkins; Charles W. Boetel, doing business under the name and style of Boetel Live Stock Com. Co.; Bowles Live Stock Com. Co. at Omaha, a corporation organized under the laws of the State of Nebraska; Bryson Bros., a corporation organized under the laws of the State of Nebraska; W. W. Buchanan, doing business under the name and style of Alex G. Buchanan & Son; Chas. Burke, Webster Mills and Everett H. Burke, doing business as partners under the name of Burke Rickly Co.; Byers Bros. & Co. Live Stock Com. Corpora-

tion, a corporation organized under the laws of the State of Nebraska; John Clay, Frank H. Connor, C. A. Kleman, Alan F. Wilson and C. G. Smith, partners doing business under the name and style of John Clay & Co.; Clay C. Clifton and Claud Clifton, partners under the name and style of Clifton Commission Co.; Clow-Lush, successors to Byron Clow, a corporation organized under the laws of the State of Nebraska; M. F. Guilfoyle, doing business under the name of Corn Belt Commission Co.; W. F. Bavinger [fol. 72] and W. T. Cox, partners under the name and style of Cox Jones Com. Co.; W. J. Dearth, doing business under the name and style of Dearth and Company (Successors to Geo. M. Wood Sheep Com. Co.); W. F. Denny, doing business under the name and style of W. F. Denny & Co.; Donahue Brothers, Inc., a corporation organized under the laws of the State of Nebraska; Allen H. Dudley and Chester P. Dudley, partners under the name and style of Allen Dudley & Co.; Frank Dworak and Theo. J. Stolinski, partners under the name and style of Dworak-Stolinski Com. Co.; T. W. Farris, doing business under the name and style of Farris-Marcy Company; Fonda Kells & Christie, a corporation organized under the laws of the State of Nebraska; Frazier-Johnson Co., a corporation organized under the laws of the State of Nebraska; H. T. Gant, doing business under the name and style of Gant Live Stock Com. Co.; Henry Dolezal and D. P. Hogan, partners under the name and style of The Globe Live Stock Com. Co.; C. L. Peterson, J. O. Alsworth, M. S. Morrill and John Boetel, partners under the name and style of Great Western Com. Co.; G. W. Greene and Walter Madden, partners under the name and style of Greene Madden & Co.; R. B. Daugherty, doing business under the name and style of Ingwersen & Daugherty; Charles F. Cox, R. L. Reynolds, and J. J. Donahue, partners under the name and style of The Inter-State Live Stock Commission Co.; T. A. Jackson, doing business under the name and style of Jackson Live Stock Co.; Jim Jensen and Frank Sterba, partners under the name and style of Jensen-Sterba L. S. Com. Co.; Jacob Jacobs, doing business under the name and style of Jacob Jacobs Live Stock Comm. Co.; J. N. Laird, doing business under the name and style of Laird Live Stock Commission Company; Lee Live Stock Comm. Co., a corporation organized under

the laws of the State of Nebraska; Lindley-Cahow Company, a corporation organized under the laws of the State of Nebraska; Wm. H. McAdams and Robert O. Ihnen, part-
[fol. 73] ners under the name and style of McAdams Bros. & Ihnen; Frank McDonald, doing business under the name and style of Frank McDonald Live Stock Com. Co.; Martin Bros. & Company, a corporation organized under the laws of the State of Nebraska; Eugene P. Melady, doing business under the name and style of Melady Bros.; D. C. Johnson and J. T. Sullivan, partners doing business under the name and style of Mutual Live Stock Com. Co.; Omaha Live Stock Com. Co., a corporation organized under the laws of the State of Nebraska; John Ralston, doing business under the name and style of Ralston Life Stock Com. Co.; Randall & Company, a corporation organized under the laws of the State of Nebraska; Clifford McCleneghan, doing business under the name and style of Record Live Stock Com. Co.; H. H. Roberts and E. A. Rose, partners under the name and style of Roberts Bros. & Rose Live Stock Com. Co.; L. E. Roberts & Co., a corporation organized under the laws of the State of Nebraska; Carl Wallin, Ward Burgoin and Chris Hansen, partners under the name and style of Charles O. Robinson & Co.; Rosenbaum Bros. & Co., a corporation organized under the laws of the State of Illinois; John Cunningham, doing business under the name and style of Security Live Stock Com. Co.; John Smith and J. C. Eastes, partners under the name and style of Wm. R. Smith & Son; Snyder Malone Coffman Co., Inc., a corporation organized under the laws of the State of Nebraska; Geo. E. Parker, C. J. Horn and John O. Nielsen, partners under the name and style of Triangle Live Stock Com. Co.; Jay N. Williams and L. E. Williams, partners under the name and style of Williams & Sons; P. H. Winn and J. P. Winn, partners under the name and style of Winn Bros.; Kay Wood, E. N. Munson, B. F. Roth, C. H. Cheyney and C. C. Johnson, partners under the name and style of Wood Brothers, Omaha; and show to the court that they are each and all incorporated or doing business as partners or under the trade names as designated and set forth; and that they are registered market agencies at the stockyards
[fol. 74] market maintained by the Union Stockyards Company of Omaha, Ltd. at Omaha, Nebraska, under the Pack-

ers and Stockyards Act, and that the individuals so engaged in business or constituting the partnerships or incorporators or stockholders of the corporations have been for many years engaged in the live stock commission business at the said Omaha market, and they are the market agencies at whose instance and for and on whose behalf this proceeding was instituted by the petitioners, and they now adopt each and all of the allegations of the original and amended petition filed herein and join with the petitioners in seeking and availing themselves of the benefit of any temporary or permanent injunction issued or to be issued in this case, and they join in the prayer of the said amended petition for the relief prayed for by the petitioners, and they hereby submit themselves fully to the jurisdiction of the court for the purposes of this proceeding.

They show to the court that they have been engaged in the live stock commission business for may years and have become skilled in the prosecution of the said business and have their money invested in it insofar as money is needed in the prosecution of the said business; and insofar as they and each of them have become successful in the said business they have acquired a reputation among their customers, and among the shippers of live stock to the Omaha market generally, for skill and fidelity in the transaction of business as live stock commission men, and thereby acquired a good will which is valuable to them and by the possession of which they have been enabled to carry on and transact their said business and thereby obtain the means of livelihood for them and their families.

And they show to the court that the enforcement of the order of the Secretary of Agriculture of November 19th, 1926, ordering a reduction in the rates of commission for selling and buying live stock at the Omaha market will [fol. 75] deprive them of a just and reasonable compensation for their services, and will cause great and irreparable loss to them and to each of them, and will destroy the business and compel many of them to abandon the business at a time in their lives when it will be extremely difficult, if not wholly impossible, to acquire any new occupation out of which to earn a living for themselves and their families.

In addition to the foregoing allegations, they adopt and make their own each and all of the general allegations contained in the amended petition herein.

Wherefore, they and each of them pray that they may be admitted as parties to this proceeding and may be enabled to join in the prosecution thereof and may have the benefit of the temporary injunction heretofore issued on the prayer of the plaintiffs for the benefit of each and all of the intervenors herein, and they pray that a permanent injunction be issued as prayed in the said amended petition herein, and for such other and further relief in the case of each of them as they may be entitled to under the pleadings and the evidence offered and to be offered in this proceeding.

James M. Beck, Francis A. Brogan, Solicitors for Intervenors. Brogan, Ellick & Raymond, Omaha, Nebraska, Attorneys for Intervenors.

[File endorsement omitted.]

[fol. 76] In United States District Court

[Title omitted]

Report of Special Master—Filed July 14, 1928

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[fol. 84] [Title omitted]

REPORT OF SPECIAL MASTER—Filed July 14, 1928

To Honorable Robert E. Lewis, United States Circuit Judge; Honorable Joseph W. Woodrough, United States District Judge; Honorable George C. Scott, United States District Judge:

This cause came to the undersigned as Special Master on Order of Reference to take the testimony and report the same with his findings and conclusions to the Court for its further determination.

Appearances:

[fol. 85] Mr. Francis A. Brogan, Mr. Alfred G. Ellick, Mr. Anan Raymond, Attorneys for Plaintiffs.

Mr. James M. Beck, of Counsel for Plaintiffs.

Mr. William J. Donovan, Assistant to the Attorney General of the United States.

Mr. H. B. Teegarden, Special Assistant to the Attorney General of the United States, Attorneys for Defendants.

Statement

Plaintiffs, constituting market agencies engaged in the buying and selling of live stock on commission at the Union Stockyards at Omaha, Nebraska, bring this suit against defendants to enjoin the enforcement of an order of November 19, 1926, made by defendant William M. Jardine, as Secretary of Agriculture of the United States, under what is known as the Packers and Stockyards Act of August 15, 1921 (Chapter 64, 42 Statutes at Large 159; U. S. C. 1925, Title 7, Chapter 9), which said order of November 19, 1926, suspended the tariff of rates theretofore in effect at the Union Stockyards at Omaha, Nebraska, for the buying and selling of live stock on commission, by market agencies on said market, and prescribed, in lieu thereof, a new schedule, effective January 1, 1927, fixing the maximum commission rates chargeable for the purchase and sale of live stock by such market agencies.

Plaintiff's amended petition charges, among other things, that:

(a) The Packers and Stockyards Act of 1921 does not authorize an order by the Secretary of Agriculture such as the one under review in the case at bar, as the only authority for the issuance of such an order is found in Section 310, which applies only to the owners or operators of stockyards, and not to market agencies.

(b) So much of the Secretary's order of November 19, 1926, as reduces the rates and charges in Schedule No. 1, was outside the lawful scope of the inquiry and to that extent said order is contrary to the terms of the law and void, as the proceedings resulting in said order were instituted under subdivision (e), Section 306 of said Act as a result of the filing by the market agencies of new rates contained in Schedule No. 2; and by the terms of said section and of the Secretary's order of suspension of January [fol. 86] 25, 1926, the lawful scope of the inquiry could not extend beyond this question whether the new rates included in Schedule No. 2, insofar as they were in excess of the rates in Schedule No. 1, were for any reason unlawful, unjust, unreasonable or discriminatory.

(c) If Title III of said Act can be interpreted as conferring power upon the Secretary to issue an order fixing the maximum rates to be charged by plaintiffs as commissions for their personal services as such commission men, so much of said Title III as purports to confer such power is null and void as in excess of the power granted to the Federal Government by the Constitution of the United States.

(d) Power to fix the maximum commissions, which may be charged by commission men for their personal services in the purchase and sale of live stock, is not a regulation of commerce within the meaning of the Constitution of the United States, and such power is not conferred either by the Commerce Clause, or any other provision of the Constitution.

(e) So much of said Act as authorizes the Secretary to determine and prescribe rates and charges to be made by plaintiffs for the personal service rendered by them to their customers, violates the Fifth Amendment to the Constitu-

tion of the United States in that it deprives plaintiffs of their property and their liberty without due process of law.

(f) The Secretary's order of November 19, 1926, insofar as it seeks to compel plaintiffs to render the services necessary to enable them to continue in business, at a rate fixed and determined by him, is violative of the rights of plaintiffs under the Fifth Amendment to the Constitution of the United States in that it deprives them of their freedom of conract, and forbids them to sell their services at a price satisfactory to themselves and to their customers.

(g) The rates and charges prescribed by said order of November 19, 1926, are unjust and illegal in that they will not provide sufficient remuneration to repay plaintiffs for [fol. 87] the expenses incurred by them in rendering the services, and a reasonable and just compensation for their own services; and the enforcement of said order will have the effect of depriving plaintiffs of their property without due process of law contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

(h) The evidence presented to the Secretary at the hearing held prior to the issuance of said order was not sufficient to establish that the schedules of rates and charges contained in either Schedule No. 1 or Schedule No. 2, were unjust, unreasonable or discriminatory.

(i) The evidence presented to the Secretary at said hearing was not sufficient to establish that the schedule of rates and charges prescribed by his order of November 19, 1926, would adequately compensate plaintiffs for their services rendered and for the disbursements made in rendering such services.

December 31, 1926, a temporary injunction was issued enjoining the defendants, until the further order of Court, from enforcing or attempting to enforce or put into operation, any rates, tariffs or charges in respect to the services of plaintiffs as market agencies operating upon the Union Stockyards at Omaha, Nebraska, based on said order of November 19, 1926, and from instituting or prosecuting any proceedings of any kind to enforce against plaintiffs, or any of them, any fines or penalties for failure to comply with

any order or orders of defendants based upon said order of November 19, 1926.

In said order of temporary injunction, the term "plaintiffs" as used therein was defined as including all market agencies affected by the Secretary's order of November 19, 1926.

The amended petition was filed by three plaintiffs, to-wit: Tagg Brothers & Moorhead, a corporation, Richard [fol. 88] M. Laverty, doing business as Laverty Brothers, and Will H. Wood and Herman J. Oswald, co-partners doing business as Wood-Oswald Co.

At the beginning of the hearing before the Special Master the petition of eighty-nine additional parties (comprising fifty-five additional market agencies) was filed, praying that they be admitted as parties to the suit, enabled to join in the prosecution thereof, have the benefit of the temporary injunction theretofore issued, and that a permanent injunction be issued as prayed in the amended petition, and for such other and further relief in the case as each of the parties may be entitled to under the pleadings and the evidence.

Facts Admitted in Amended Pleading

1. Plaintiff, Tagg Brothers & Moorhead, is a corporation organized under the laws of Nebraska with its principal place of business in the city of Omaha in said state.

Plaintiff, Richard M. Laverty, is engaged in business in the city of Omaha, Nebraska, under the name of Laverty Brothers.

Plaintiffs, Will H. Wood and Herman J. Oswald, are co-partners doing business under the name of Wood-Oswald Co.

Each of said plaintiffs resides in the District of Nebraska, and is engaged in the live stock commission business at the Union Stockyards in the city of Omaha, Nebraska.

2. Plaintiffs bring the suit on behalf of themselves and all other persons, firms or corporations engaged in the business of buying or selling live stock on commission in the public market maintained by the Union Stockyards in the city of Omaha, Nebraska, who are similarly situated and who wish to join in the petition and become parties thereto.

[fol. 89] 3. Defendant, William M. Jardine, is Secretary of Agriculture of the United States of America. Defendant, John G. Sargent, is Attorney General of the United States of America. Defendant, James C. Kinsler, is the United States District Attorney for the District of Nebraska.

4. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00; and the suit arises under the Constitution and Laws of the United States.

5. The Union Stockyards of Omaha, Nebraska, is a live stock market in which cattle, sheep, swine, horses, mules and goats consigned to various persons at said stockyards from various parties in the United States are dealt in, bought and sold.

6. Pursuant to the provisions of the Act of Congress of August 15, 1921, known as the Packers and Stockyards Act of 1921, the then Secretary of Agriculture, in the year 1921, gave notice to the owners of said Union Stockyards at Omaha, that it was a public stockyard within the meaning of Section 302 of said Packers and Stockyards Act.

7. Plaintiffs are registered market agencies within the meaning of said Act, and for many years last past have been continuously engaged in the business of live stock commission men at said Union Stock Yards.

8. Plaintiffs' business consists of buying and selling live stock for the account of other persons upon a commission paid to such commission men for their services in receiving and caring for such shipments of live stock, and negotiating the purchase or sale thereof.

9. Plaintiffs, as such live stock commission men, negotiate the sale of live stock consigned to them, and the purchase of live stock for other persons, acting exclusively in such transactions as an intermediary for the sellers and purchasers of live stock; and the business of plaintiffs consists in rendering the personal service and contributing skill and experience in carrying out the functions entrusted to them by their customers.

[fol. 90] 10. On or about August 29, 1923, plaintiffs, pursuant to an informal arbitration, conducted with the approval of the then Secretary of Agriculture in charge of the Packers and Stockyards Administration, filed their schedule of rates, services and charges, in the office of the Packers and Stockyards Administration at Washington, which schedule was then and will be herein designated as Tariff No. 1, a copy of which is filed with the petition.

11. On January 16, 1926, plaintiffs filed with the Packers and Stockyards Administration at Washington an amended schedule of rates, services and charges known as Tariff No. 2, a copy of which is filed with the petition.

12. January 25, 1926, defendant, William M. Jardine, as Secretary of Agriculture in charge of the Packers and Stockyards Administration, issued an order suspending Tariff No. 2, and directing a hearing upon the reasonableness of the same, a copy of which order is filed with the petition.

13. Thereafter such proceedings were had that on November 19, 1926, said defendant, William M. Jardine, as Secretary of Agriculture, issued an order suspending and setting aside Tariff No. 2, and substituting in lieu thereof a schedule of rates and charges prescribed and contained in said order, a copy of which order of November 19, 1926, is filed with the petition.

14. The schedule of rates adopted in said Secretary's order of November 19, 1926, will result in an aggregate reduction in the gross returns received by the market agencies affected thereby.

15. The Secretary of Agriculture proposes to enforce said order of November 19, 1926, by appropriate penalties selected from those authorized by the Packers and Stockyards Act of 1921, and by other acts of Congress relating to his authority in the premises.

Plaintiffs' amended petition alleges and defendants' amended answer denies:

1. The arbitration proceedings referred to in paragraph 5 of the amended petition, were conducted under the immediate direction of the then Secretary of Agriculture.

[fol. 91] 2. The order of defendant, William M. Jardine, Secretary of Agriculture, made on November 19, 1926, is illegal and void for the following reasons:

(a) The Packers and Stockyards Act of 1921 does not contain any authority giving to the Secretary of Agriculture any power to issue an order to the market agencies at the conclusion of a hearing under Title III of said Act.

(b) The only authority in said Act for the issuance of an order of the character set forth herein is found in Section 310 of said Act, which, in respect to market agencies, provides only that the Secretary may determine and prescribe what will be the just and reasonable rate or charge, or rates or charges to be thereafter observed in such case, and what regulation or practice is or will be just, reasonable and non-discriminatory, to be thereafter followed.

(c) The authority to issue an order contained in Section 310 applies only to the owners or operators of stockyards, and not to market agencies. Because of the failure of said Statute to grant defendant power to issue said order, same is void and of no effect.

(d) The proceedings which resulted in said order were instituted under subdivision (c) of Section 306 of said Act, as the result of the filing of the new rates by the market agencies as set forth and embodied in Schedule No. 2.

(e) By the terms of said Section 306, and by the terms of the order of suspension of January 25, 1926, the lawful scope of the inquiry could not extend beyond the question whether the new rates included in Schedule No. 2, insofar as they were in excess of the rates in Schedule No. 1, were for any reason unlawful or were unjust, unreasonable or discriminatory.

(f) So much of said order of November 19, 1926, as reduces the rates and charges in Schedule No. 1, was outside the lawful scope of the inquiry, and to that extent said order is contrary to the terms of said law, and is void.

[fol. 92] (g) The schedule of rates and charges contained in the conclusions and order of November 19, 1926, constitute an average reduction of substantially 15 per cent of the

customary and usual rates which had been charged in the said market by the said market agencies, and in other similar markets throughout the United States for several years prior to 1926, and for all of the fifty-eight market agencies engaged in business at the Omaha market will result in an aggregate reduction each year of many thousands of dollars in the gross returns received by each of said market agencies.

(h) The said charges made prior to said hearing were not excessive and were not unjust, unreasonable or discriminatory.

(i) The rates and charges prescribed by said Secretary in said order of November 19, 1926, are unjust and illegal in that they will not provide sufficient remuneration to repay the market agencies for the expenses incurred by them in rendering the services and a reasonable and just compensation for their own services.

(j) The enforcement of said order of November 19, 1926, will have the effect of depriving the plaintiffs of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

(k) The actual expense of rendering the service will in a great many instances be more than the said schedule will yield, so that if said market agencies render the service expected and required of them by their customers and necessary to enable them to continue in business, they will be compelled to render such service at an actual loss.

(l) The evidence presented to said Secretary of Agriculture at the hearing before him was not sufficient to establish that the schedule of rates and charges contained in either Schedule No. 1 or Schedule No. 2 were unjust, unreasonable or discriminatory.

(m) The evidence presented to said Secretary of Agriculture at said hearing was not sufficient to establish that the schedule of rates and charges prescribed by him in his order of November 19, 1926, would adequately compensate [fol. 93] the market agencies for the services rendered by

them, and for the disbursements made in rendering such service.

(n) Said order of November 19, 1926, insofar as it seeks to compel said market agencies, if they wish to continue in business, to render the services required and expected from them by their customers, and necessary to enable them to continue in business, at a rate fixed and determined by the Secretary of Agriculture, is violative of the rights of said market agencies, and their customers, under the Fifth Amendment to the Constitution of the United States, in that it deprives them of their freedom of contract and forbids said market agencies to sell their services at a price satisfactory to them and to their customers.

(o) So much of said Act of August 15, 1921, known as the Packers and Stockyards Act of 1921, as authorizes the Secretary of Agriculture to determine and prescribe rates and charges to be made by plaintiffs for the personal service rendered by them to their customers, violates the Fifth Amendment to the Constitution of the United States in that it deprives plaintiffs of their property and their liberty without due process of law.

(p) If Title III of the Packers and Stockyards Act of 1921 can be interpreted as conferring any power upon the Secretary of Agriculture to issue an order which fixes the maximum rates to be charged by plaintiffs as commissions for their personal services as such commission men, so much of said Title III as purports to confer such power upon the Secretary of Agriculture is null and void as in excess of the power granted to the Federal Government by the Constitution of the United States.

(q) Power to fix the maximum commissions which may be charged by commission men for their personal services in the purchase and sale of cattle, is not a regulation of commerce within the meaning of the Constitution of the United States, and such power is not conferred either by the Commerce Clause, or any other provision of the Constitution.

3. If said market agencies continue to render their service without complying with said order, defendants

[fol. 94] threaten and intend to cause the registration of said market agencies to be revoked and to cause said market agencies, the members of the firms, and the officers of the corporations to be prosecuted pursuant to the provisions of Section 314 of said Packers and Stockyards Act, whereby a penalty may be levied upon each and every market agency in the sum of $500.00 for each offense, and wherein it is provided that each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense, and whereby it is made the duty of the various district attorneys, including defendant, James C. Kinsler, United States District Attorney, to institute proceedings for the recovery of such penalty.

4. Plaintiffs, during the course of their business as live stock commission men, have uniformly dealt fairly and honestly with their patrons, and have not imposed, collected or received from them any unjust, unreasonable or unfair commissions or charges for their services, by reason whereof a relation of trust and confidence has been built up between the plaintiffs and their said patrons, and as a result thereof plaintiffs enjoy a valuable good will in their aforesaid business.

5. The continuance of this business relation, and the protection and preservation of the good will of the business of plaintiffs is highly valuable and important to them, and to have the same destroyed, or to be prevented from continuing and carrying on the business relations, would produce a great and irreparable loss and injury to plaintiffs.

New Matter Alleged in Defendants' Amended Answer

1. The arbitration proceedings conducted on or about August 29, 1923, referred to in paragraph 5 of plaintiffs' amended petition were the outgrowth of a proceeding before the Secretary of Agriculture entitled "American Live Stock Association, et al., vs. Omaha Live Stock Exchange, et al.," Docket Nos. 11, 12, 13 and 14, originating upon complaints of various private complainants.

2. Said arbitration was conducted upon the suggestion and agreement of the private parties to said proceedings,

and the persons who served as arbitrators therein were chosen and agreed upon by said private parties and did [fol. 95] not serve in any official capacity which they may have possessed under the Government of the United States, but purely by virtue of their selection by agreement of the parties to said proceedings; and the then Secretary of Agriculture merely gave his approval to said plan of arbitration as a mode of compromise and settlement of said proceedings, agreeable to the parties thereto.

3. The Secretary's order of November 19, 1926, while reducing the rates chargeable by plaintiffs in certain cases, increases those chargeable by them in others, so that the amount of reduction in aggregate gross returns receivable under the rates fixed by said order, as compared with those receivable under Tariff No. 1 or Tariff No. 2 is grossly exaggerated by plaintiffs' allegations in paragraph 12 of the amended petition.

4. The evidence presented at the hearing before the Secretary of Agriculture and contained in the record of proceedings before him entitled "Secretary of Agriculture vs. American Live Stock Commission Company, et al.," Docket No. 143, was sufficient to warrant said Secretary's finding that the schedule of rates contained in Omaha Live Stock Exchange Tariff No. 2 were unjust, unreasonable and discriminatory.

5. Evidence was presented to said Secretary at said hearing which warrants him in fixing the schedule of rates and charges prescribed by him in his conclusions and order of November 19, 1926.

6. The allegations in paragraph 18 of the amended petition have by the order for a temporary injunction during continuance of the litigation, been rendered irrelevant and immaterial to this suit.

Under the pleadings and the evidence the Special Master finds:

[fol. 96] Findings of Fact

1. Union Stock Yards at Omaha, Nebraska, as Live Stock Market.—The Union Stockyards of Omaha, Ne-

braska, is a live stock market in which cattle, sheep, swine, horses, mules and goats consigned to various persons at said stockyards from various parties in the United States are dealt in, bought and sold.

2. Said Stockyards Designated a Public Stockyard under Packers and Stockyards Act of 1921.—In the year 1921 the then Secretary of Agriculture of the United States gave notice to the owners of said Union Stockyards that it was a public stockyard within the meaning of Section 302 of the Act of Congress of August 15, 1921, known as the Packers and Stockyards Act of 1921.

3. Plaintiffs Are Registered Market Agencies under Said Packers and Stockyards Act.—Plaintiffs, fifty-eight in number (consisting of sixteen corporations nineteen individually owned concerns and twenty-three partnerships), for many years last past have been continuously engaged in the business of live stock commission men at said Union Stockyards, and are registered market agencies within the meaning of said Packers and Stockyards Act.

These market agencies are generally spoken of in the proceedings in this case as commission men or commission firms, and for convenience they will be hereafter so designated.

4. Plaintiffs' Business That of Buying and Selling Live Stock for Others upon Commission.—Plaintiffs' business consists of buying and selling live stock for the account of other persons upon a commission paid to such commission men for their services in receiving and caring for such shipments of live stock and negotiating the purchase or sale thereof.

[fol. 97] 5. Omaha Live Stock Exchange—Organization and Purposes.—The Omaha Live Stock Exchange was first organized as a corporation under the laws of Nebraska in January, 1889, and continued as such until about 1915, when it was dissolved as a corporation and thereafter became a voluntary association. The purposes of the association as disclosed by Rule 3 in the Rule Book issued March 15, 1924, are:

"The objects of this association are to maintain a commercial exchange: not for pecuniary gain or profit, but to promote uniformity in the customs and usages of members; to inculcate principles of justice and equity in trade; to enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate the speedy adjustment of business disputes, to acquire and disseminate valuable commercial and economic information, and generally to secure to its members and patrons the benefits of cooperation in the furtherance of their legitimate pursuits."

The Omaha Live Stock Exchange is composed of most of the commission men and traders on the market and is the organization through which plaintiff commission firms, doing business at the Union Stockyards, Omaha, Nebraska, function.

Every member firm on the Omaha live stock market is bonded. The bonds run from a minimum of $5000 to almost $50,000 in amount. The bonds run to the Secretary of the Omaha Live Stock Exchange as trustee for whom concerned. Thus are the proceeds of all live stock consigned to plaintiff commission firms safeguarded. In the period of thirty years on the Omaha market no shipper has ever lost a dollar because of the default of a commission firm.

6. The Activities of the Omaha Live Stock Exchange Are Detailed Quite at Length in the Testimony of Mr. A. F. Stryker, Who Was Secretary of the Exchange.—The activ- [fol. 98] ities of the Omaha Live Stock Exchange from the time of its inception are detailed quite at length in the testimony of Mr. A. F. Stryker, (now deceased), who was Secretary of the Exchange (Record before Master, pp. 83-97).

Some of the activities mentioned by him were efforts: (a) to secure better railroad service in getting stock to the yards; (b) better service in weighing of stock in transit; (c) the feeding by the yard company of better hay to cattle in the yards; (d) reduction of telegraph tolls; (e) Government inspection at slaughtering points, and (f) to compel

rendering companies to pay higher prices for dead stock.

Another one of the activities testified to by him was the trial of a case before the Interstate Commerce Commission to bring about an equalization of freight rates to the east between Omaha and the lower river markets, Kansas City and St. Joseph, resulting in the lowering of the rates, the minimum decrease being one-half cent per hundred pounds in one case, to seven cents per hundred pounds maximum in another, from Omaha to the Mississippi River and points east; that by reason thereof there was an increased buying power on the Omaha market, which was immediately taken advantage of by independent slaughterers in the east who increased their buying at Omaha with resultant beneficial effects to the patrons of the market; that seven cents per hundred pounds would be $15.40 per car on a minimum car of cattle.

He also referred to a proceeding before the Interstate Commerce Commission to prevent the carriers from eliminating from their rates what are termed Stock-Cattle Rates, being seventy-five per cent of the regular cattle, rate in which proceeding other markets joined, the final result being a victory for the patrons of the market, which he estimated had saved the patrons of the public markets of this country more than one million dollars. He stated that the magnitude of the decision was apparent from the fact that for three or four months in the fall sixty-five per cent, [fol. 99] approximately, of the receipts of the Omaha market and other markets on the river go to the country for further finishing, and that on this sixty-five per cent there was a twenty-five per cent saving in freight rates, and since that time the Stock-Cattle Rates had been broadened until they now include stock sheep and stock hogs.

He also testified that in 1920 the Government Bureau of Animal Industry abandoned the ante-mortem inspection service of cattle and that thereafter the commission men arranged for the Exchange cattle scale men to perform such inspections, which were authorized by both the packers and the Government, since which time such inspection is carried on at an annual expenditure by plaintiff commission firms in this case of approximately $14,000, which is not in any way passed to the shippers, and which service he stated commission men had estimated resulted in an

annual saving to the patrons of the market of from ten to twenty dollars a head on approximately seven thousand to nine thousand cattle.

7. Among the Agencies Other than Commission Firms Which Operate at Said Stockyards Are "Traders" and "Speculators."—Among the agencies other than commission firms operating at said stockyards are what are known as "traders" and "speculators." Sometimes traders buy on orders for shipment to the country, and have to sell the portion of the stock they cannot ship; at other times they buy to resell as pure speculation. Traders who do not belong to the Live Stock Exchange do business through some commission firm which is a member of the Live Stock Exchange, and in reselling make use of such commission firm. The placing of live stock by traders and speculators with commission firms for resale is termed "planting of live stock with commission men."

8. Other Terms Peculiar to Live Stock Commission Business Defined.—The terms "truck ins" and "drive [fol. 100] ins" are applied to live stock reaching the market by automobile truck and driven in. The terms "truck outs" and "drive outs" refer to stock taken from the market by automobile truck and driven out, respectively. A car of live stock containing stock owned by different persons is what is termed a "plurally owned car." Live stock purchased by traders and speculators for resale is sometimes referred to as "seconds."

9. Number of commission firms and volume of business in carloads per firm at the Omaha Market for the years 1910, 1915, 1920, 1925 and 1926.—The number of commission firms engaged in the commission business at the Omaha market and the volume of business in carloads per firm transacted by them on the market for each of the years 1910, 1915, 1920, 1925 and 1926 is as follows:

Year	Firms	Carloads per firm
1910	45	1941
1915	50	1978
1920	51	2150
1925	57	1940
1926	58	1799

The volume of business herein shown is exclusive of horses and trucked in and driven in live stock.

10. If there had been included in the volume of business shown in the last preceding finding, driven in and trucked in animals, the number of cars per firm per annum there shown would have been increased, and the percentage of firms engaged to volume of business would have been smaller than figures there shown indicate.—As stated in the last preceding finding the volume of business per firm as shown therein is exclusive of horses and trucked in and [fol. 101] driven in live stock. If the driven in and trucked in animals had been included, the number of cars per firm per annum would have been increased above those there shown, and the percentage of firms engaged to volume of business would have been smaller. The driven in and trucked in business has increased from a negligible percentage twenty years ago, to the point that now twenty-one per cent or better of the hogs come in by truck.

11. Members of Omaha Live Stock Exchange for the years 1910, 1915, 1920, 1925 and 1926.—The members of the Omaha Live Stock Exchange for the years 1910, 1915, 1920, 1925 and 1926 were as follows:

Year	Members
1910	201
1915	245
1920	243
1925	222
1926	220

12. The volume of business in carloads of live stock on the Omaha market for the years 1924, 1925 and 1926, and for the first five months of said years as compared with the first five months of 1927.—The volume of business in carloads of live stock on the Omaha market for the years 1924, 1925 and 1926 was as follows:

Year	Carloads
1924	129,301
1925	110,584
1926	104,373

The volume of business for the first five months of said years 1924, 1925, and 1926, compared with the first five [fol. 102] months of 1927, was as follows:

First 5 months of year	Carloads
1924	56,845
1925	47,100
1926	43,053
1927	38,337

It thus appears that the receipts for the year 1925 were higher than for the year 1926, and that for the first five months of 1927 the receipts were lower than for a like period in 1926.

This volume of business is again exclusive of horses and driven in and trucked in live stock.

13. Volume of business in total head of Cattle, Calves, Hogs and Sheep Handled on the Omaha Market in Years 1924, 1925 and 1926.—The volume of business in total head of cattle, calves, hogs and sheep handled at the Omaha market for the years 1924, 1925 and 1926, which includes stock received in cars and trucked in and driven in is as follows:

Year	Cattle	Calves	Hogs	Sheep
1924	1,758,294	103,622	3,978,288	2,844,421
1925	1,592,599	116,221	3,355,207	2,419,551
1926	1,692,058	123,011	2,647,289	2,779,761

14. Services Rendered by the Commission Men in Connection with the Sale or Purchase of Live Stock.—The services rendered by commission men in connection with the sale of live stock include the following:

When carload shipments of live stock are set at the unloading chutes of the Stockyards Company the commission man begins his work. Much of the live stock unloaded by the Yard Company is taken by the commission firm's em- [fol. 103] ployes to the pens in the different divisions of the stockyards, the hogs to the hog yards, the sheep to the sheep barns and the cattle to the cattle yards. After the cattle have been yarded in pens set aside for the commission firms by the Stockyards Company, hay is ordered of the Yard Company by the commission man. The cattle are sorted into the classes to which they belong. From a carload of twenty-five cattle, there may be assorted six or eight different classes of stock. There may be prime fat steers, medium fat steers and feeder steers. There may also be

in the same load prime fat cows, medium fat cows and cutter or canner cows, or cows of cheaper grade. There may be some bulls, some springer cows, and some calves. Each of the different classes of stock must be sold to the buyer who will pay the highest amount of money therefor.

The average commission house has salesmen for steers and cows. Some of them have feeder salesmen, and others salesmen for the odds and ends of live stock, bulls, calves, cripples, etc. One car of cattle may require the selling ability or sales service of three persons, sometimes four persons.

The stock is watered by the employes of the commission firm. After having been sold and the stock has been fed and watered, it is taken to the scales of the Stockyards Company, and there offered for weighing to the purchaser. The responsibility for the care of live stock rests with the commission man or firm until the stock is placed upon the scales of the Stockyards Company, and the purchaser in turn becomes responsible for the stock.

Next comes the office work. Tickets are made by the Stockyards Company for each draft of live stock weighed. These tickets show the pen from which they were weighed, the number and species of live stock and the weight thereof, the name of the commission firm, and the party to whom weighed. The salesman of each different lot of stock marks on the ticket the price at which the stock was sold. The office force of the commission firm takes these tickets and [fol. 104] assembles them so that all of the tickets of a given shipment are together. They are then entered upon the account sales. These account sales show the name of the shipper, the town from which he shipped, the railroad which transported the live stock, the mail address of the shipper if different from the shipping point, the car number or numbers in which the shipment was transported, the number of head of live stock in the different classes as assorted, sold and weighed, the weight of each different lot, the price and the amount of the extension of the gross sales amount. These account sales also show freight, feed, yardage, and other items of charge against the shipment. These are deducted from the gross proceeds, and the net is sent to the shipper, applied on mortgages, if such there be, sent

to the bank designated by the shipper, or such disposition is made thereof as the necessities of the case demand.

In the meantime office employes have billed the purchasers for the purchase price of the live stock. The money is collected and deposited in the bank, but in the meantime some shippers may have been in a hurry and before collection is made may have received a draft for the proceeds of their live stock and departed for their homes. These remittances before commission men have received their money are not as frequent as they used to be. Commission men very largely now are adopting the policy that they should pay when they are paid.

The reverse of the service here described, practically speaking, is performed where commission firms purchase live stock for feeders to be shipped to the country for further finishing, except that the firms do their best to buy such stock at the lowest possible price, billing the purchaser after stock has been purchased. In cases of purchase for shipments, the commission man is responsible for the live stock after it has been bought until it is ordered out and turned over to the Stockyards Company for loading.

[fol. 105] 15. Promptness required of Commission men in Handling Transactions for Shippers—Expert Help Required.—From ninety to ninety-five per cent of live stock arriving at the market is handled the same day it comes in. The stock is unloaded between 4:00 and 8:00 o'clock in the morning, yarded between 6.00 and 8:00, assorted and classified and as a rule sold before 12:00 o'clock. Except during extraordinarily heavy runs or on a slow market, it is weighed by 1:00 or 2:00 o'clock in the afternoon, the account sales are made up and the bulk of them go out the same day, and the money is in the bank going back to the country before the bank closes at 3:00 P. M. Expert, experienced help, both in the yards and in the office, is required to handle the business speedily. One must have long years of experience to qualify him to conduct the live stock commission business successfully.

16. Nature of Live Stock Commission Business—Volume of Business Varies—Necessity of Organization to Handle Practically a Peak Load.—The live stock commission business now is a seasonable and territorial business.

One firm may have a large business in a certain territory in one year and in the next year because of climatic conditions, the territory which supplied such firm with a large volume of business ships very little, while another firm may have been more fortunate territorially and their business holds up.

The volume of business also varies greatly in the different seasons of the year, being heavier in the winter and in the spring than in the summer, and heavier receipts of western cattle and sheep in the fall than in the winter. The commission firm, in order to satisfactorily take care of the business offered it, must be ready at all times to handle practically a peak load as there is no way of knowing at noon the day before what the run will be the next day, and it may not even reduce expenses of its sales force during the slow season, or even its expert clerical force.

[fol. 106] 17. Time Spent in Their Business by Two Commission Men.—Two of the commission men testified to the time spent by them in the transaction of the live stock commission business, as follows:

Will H. Wood, a member of the Wood-Oswald Company, testified that he had been in business as a live stock commission merchant for nearly 30 years and is cattle salesman and manager of his firm; that for the last four months of the year he arises in the morning at 4:45 o'clock, has his breakfast on the table a little after 5:00, is in the office by 5:30, on the horse from 6 to 10 hours a day, and leaves his office from 9:00 to 11:00 o'clock at night; that in the fall of the year the selling of beef animals quits at 3:00 P. M., but feeder cattle can be sold up to any time in the day it is light enough to see; that for the first six months he is in the office from noon or a little later until 5:00 or 6:00 o'clock, but in the fall of the year on many nights he does not go to his office until it is too dark to see about weighing, and then has his office work to do at night.

R. M. Laverty testified that he had 31 years experience in the live stock commission business and is manager and active hog salesman; that he goes to his office at 7:00 o'clock in the morning and out into the yards as hog salesman at 8:00 o'clock; that in the afternoons he has to look after the management of the office, which usually takes him until 5:00 or 6:00 o'clock; that for the last thirty years he has not

spent less than 10 hours a day altogether, acting as salesman and office manager.

18. Independent Commission Firms Have Operated on the Omaha Market Since the Organization of the Omaha Live Stock Exchange.—Ever since the organization of the Omaha Live Stock Exchange independent commission firms have operated on the Omaha market without hindrance or opposition from the Exchange. Since the Exchange started operating, about eight independents have existed, but only [fol. 107] two are still operating, the Farmers Union and one independent concern. One of these is a cooperative concern. The Exchange does not admit cooperatives to membership. In 1926 the two concerns now operating on the market handled about 6.5 per cent of the volume of business in cars.

19. Effect of Elimination of Traders and Speculators from the Market.—The presence of traders and speculators on the market stimulates the market as it increases competition in the purchase of live stock, and therefore benefits the patrons of the market by securing a better price in the sale of stock than would be secured if traders and speculators were eliminated from the market.

20. Other Services Rendered by Live Stock Commission Men to Their Customers Aside from Services in Receiving and Caring for Live Stock Shipments and Negotiating Purchase or Sale Thereof.—There are other services rendered by the live stock commission man to his customers aside from the services rendered in receiving and caring for shipments of live stock and in negotiating the purchase or sale thereof. Customers of the commission man consult with him (a) as to the breed and number of live stock which ought to be handled on a given piece of ground; (b) the price which should be paid for live stock; (c) the ages of live stock to be handled; (d) the length of time live stock should be fed and the kind of feed to be used in the fattening process; (e) whether, and when live stock should go onto pasture or into the dry lot.

The commission man keeps his customers constantly advised of market conditions, through a daily market paper, for which the commission man pays; through monthly,

semi-monthly and weekly market papers; by telephone and telegraph as to violent fluctuations in the market. The shipper of live stock is largely guided by his commission [fol. 108] man as to the date when the shipper should have his live stock on the market.

21. About August 29, 1923, Plaintiffs Filed Their Schedules of Rates, Services and Charges, Effective September 1, 1923, Designated as Tariff No. 1, with Packers and Stockyards Administration.—About August 29, 1923, plaintiffs, pursuant to an informal arbitration conducted with the approval of the then Secretary of Agriculture in charge of the Packers and Stockyards Administration, filed their schedules of rates, services and charges in the office of the Packers and Stockyards Administration at Washington, D. C. These schedules were effective on September 1, 1923, are set forth in the printed volume containing the amended petition and exhibits thereto filed in this case, pages 15 to 19, inclusive, and are designated as Tariff No. 1.

22. January 16, 1926, Plaintiffs Filed an Amended Schedule of Rates, Services and Charges, Cancelling Tariff No. 1, Which Amended Schedules Were Effective January 26, 1926, and Are Designated as Tariff No. 2,—January 16, 1926, plaintiffs filed with the Packers and Stockyards Administration at Washington, D. C., an amended schedule of rates, services and charges, which cancelled Tariff No. 1, together with the supplements thereto. These amended schedules were effective January 26, 1926, are contained in the printed volume mentioned in the last preceding findings, pages 19 to 26, inclusive, and are designated as Tariff No. 2.

23. January 25, 1926, Secretary of Agriculture Suspended Tariff No. 2, until Expiration of Thirty Days Beyond Time When It Was Made effective.—By order of January 25, 1926, defendant W. M. Jardine, as Secretary [fol. 109] of Agriculture, ordered the suspension of said Tariff No. 2, until the expiration of thirty days beyond the time when such tariff would otherwise go into effect. Said order of suspension is found in the printed volume containing plaintiff's amended petition and exhibits, pages 27 to 32, inclusive.

In the preliminary part of the order the Secretary recited the filing and putting into effect by the respondents of schedules of rates and charges for their services as market agencies (meaning Tariff No. 1), the making and publishing of a new schedule of rates and charges designated as Tariff No. 2; that he had reason to believe the increases proposed by such new schedules were not justified and were in fact unreasonable; and that it appeared that a proceeding under Title III of the Packers and Stockyards Act of 1921 should be had for the purpose of determining the reasonableness and lawfulness of said new rates and charges, and, pending the hearing thereof and decision of the Secretary, the operation of said Tariff No. 2 should be suspended and its use deferred.

24. Secretary's Order of January 25, 1926, Gave Notice of Hearing Upon the Reasonableness and Lawfulness of Said New Rates and Charges, Before an Examiner of the Packers and Stockyards Administration.—By said order of January 25, 1926, said Secretary of Agriculture gave notice to the respondents named in said order (being market agencies operating on the Union Stockyards at Omaha, Nebraska), of a hearing upon the reasonableness and lawfulness of said schedule of rates and charges, before an Examiner of the Packers and Stockyards Administration at Omaha, Nebraska, beginning February 24, 1926, at 10:00 A. M., or as soon thereafter as the parties could be heard and continuing from time to time until said hearing was completed.

[fol. 110] 25. Secretary's Order of January 25, 1926, Gave Respondents Notice They Would Have Right to Appear at Hearing and Show Cause Why a Further Order in Respect to Said Schedules Should Not be Made by Him.—By his said order of January 25, 1926, said Secretary of Agriculture notified said respondents they would have the right to appear at said hearing and show cause why a further order in respect to said schedules of rates and charges should not be made by said Secretary in conformity with the provisions of Title III of the Packers and Stockyards Act of 1921.

26. Hearing Held Before an Examiner of Packers and Stockyards Administration in Said Matter.—A hearing was

held before an Examiner of the Packers and Stockyards Administration at Omaha, beginning March 25, 1926, at which many witnesses were examined and a mass of exhibits introduced. Only one witness was called by the respondents and testified at said hearing. His testimony dealt with the method by which certain Government audits were made.

27. Oral Testimony and Exhibits at Said Hearing Before the Examiner.—The oral testimony offered at said hearing before the Examiner is contained in eight separate volumes, numbered from one to eight, both inclusive, consisting of 1,564 pages. The exhibits offered at said hearing are listed in the first pages of Volume 1 of said testimony.

28. Audits of Each of Plaintiff's Market Agencies Introduced at Said Hearing Before the Examiner.—At said hearing before the Examiner, separate audits of each of the market agencies, plaintiffs in the case at bar (which had been prepared by Government auditors), were introduced in evidence as Exhibits 7 to 65. In these audits each commission firm was designated by number only, which [fol. 111] was done in order to avoid publicity. Exhibit 6 of the record before the Examiner is a code for identifying the numbers with the names of the firms audited in said Government audits. The numbers of the firms begin with one and run consecutively to sixty, except that number fifty-nine was omitted for some reason. The Government audits, therefore, deal with only fifty-nine firms. These audits begin with Exhibit 7, which is the audit of firm No. 1. These Government audits are sometimes referred to in the testimony as "Blue Audits."

29. Secretary's Order of November 19, 1926, Setting Aside Tariff No. 2 and Substituting in Lieu Thereof a Schedule of Rates and Charges Prescribed by Him.—After completion of the hearing before the Examiner, there was an oral argument by counsel for the respective parties before William M. Jardine, Secretary of Agriculture. At this argument a schedule of figures made subsequently to the conclusion of the testimony before the Examiner, was submitted to the Secretary and ordered made part of the record.

Thereafter said Secretary issued his order of November 19, 1926, suspending and setting aside said Tariff No. 2, and substituting in lieu thereof a schedule of rates and charges prescribed by him and contained in said order, to enjoin which order plaintiffs bring the suit at bar. The conclusions and order of November 19, 1926, are set out in the printed volume containing the amended petition and exhibits, pages 31 to 59.

30. Record Before Examiner and Secretary of Agriculture Which Plaintiffs Offered at Hearing Before Special Master in Case at Bar.—At the hearing before the Special Master herein, plaintiffs offered in evidence and the Special Master received the following exhibits:

The eight volumes of transcript of oral testimony taken before the Examiner, as mentioned in Finding 27, were offered and received as Exhibit 99.

[fol. 112] Exhibits 1 to 98, inclusive, at the hearing before the Examiner, as identified in said oral evidence, (which include the Government audits as Exhibits 7 to 65, both inclusive,) were offered and received.

Work sheets referred to in the oral testimony before the Examiner were offered and received as Exhibits 100 and 100-a.

Sixty different volume reports referred to in the oral testimony before the Examiner were offered and received as Exhibit 101.

A schedule of figures prepared and presented to the Secretary of Agriculture on the oral argument, as stated in Finding 29, was offered and received in evidence as Exhibit 102.

31. Oral Evidence Heard by Special Master and Additional Exhibits Introduced on Behalf of Plaintiffs and Defendants.—The oral evidence heard by the Special Master in the case at bar is contained in a separate volume of 344 pages. Prior to the beginning of the hearing before the Special Master herein, plaintiffs caused auditors of the John M. Gilchrist Company to make audits of the business of fifty-six of the commission firms doing business at said Union Stockyards. These audits were introduced in evidence by plaintiffs as Exhibits 103 to 111, both inclu-

sive, and Exhibits 122, 123 and 123-a. An additional audit of the business of Tagg Brothers & Moorhead, one of the plaintiffs, Exhibit 118 and of the business of R. M. Laverty, doing business as Laverty Brothers, Exhibit 119, were introduced on behalf of plaintiffs.

On behalf of defendants there were introduced in evidence Exhibits 124 and 125, further audits by the Government auditors. The evidence of William E. Reed, taken by deposition, was introduced by defendants as Exhibit 126.

32. Secretary's Order of November 19, 1926, Permitted [fol. 113] an Increase in Commissions for Selling for Traders and Speculators Practically Double the Old Rates.—The Secretary's order of November 19, 1926, permitted an increase of commissions to commission firms for selling for traders and speculators of practically double the commissions charged for such service under Tariff No. 2.

33. The Audits of John M. Gilchrist Company Deal With Fifty-six Commission Firms Only.—The audits of John M. Gilchrist Company deal with only fifty-six commission firms for the reason that the American Live Stock Commission Company's books were not available, the McCullough Commission Company was out of business and their records could not be located, and the business of the Central Live Stock Company was audited together with the business of the Interstate Live Stock Company.

34. Exhibit 103 Shows As to Each of Said Fifty-six Commission Firms: (a) Their Volume of Business in Total Cars Handled for Year 1925; (b) Sale and Purchase Value Thereof; (c) Commissions Which Would Have Been Realized Under Secretary's Order of November 19, 1926, and (d) Commissions Which Would Have Been Realized Under Said Order Excluding Increase for Dealers' and Speculators' Sales.—Exhibit 103, prepared by the auditors of the John M. Gilchrist Company, discloses the volume of business handled by each of the fifty-six commission firms doing business at said Union Stockyards during the year 1925, together with the commissions which would have been realized by them under the Secretary's order of November 19, 1926, and the commissions which would have been realized under said Secretary's order excluding the increase author-

ized by him for dealers' and speculators' sales. This exhibit shows for each firm:

[fol. 114] (a) The total number of cars of live stock handled.

(b) The sale and purchase value of such live stock.

(c) The commissions which would have been received on said business applying thereto the Secretary's order of November 19, 1926.

(d) The commissions which would have been received on said business applying thereto the Secretary's said order, excluding the increase authorized by him for dealers' and speculators' sales, and including the commissions for such sales actually received under the tariff in effect during the year 1925.

The Gilchrist auditors reduced the stock handled by each firm to a carload basis by adding to the straight and mixed carloads received a conversion of the "truck ins" and "drive ins" and "dealers" and "speculators," using the equivalents stated in paragraph 17 of the Secretary's order, viz: 27 head of cattle to a car, 70 head of hogs and 225 head of sheep. The Secretary's order did not name an equivalent for calves, and the Gilchrist auditors, after consulting with some experienced live stock commission men, used 40 head of calves to a car. Certain parts of the Secretary's order of November 19, 1926, were not clear as to application, and the auditors consulted with experienced live stock commission men for a practical application of such portions, and after such commission men had told the auditors what they thought the Secretary's order meant, the tariff was applied by the Gilchrist auditors accordingly. Exhibit 103 shows the following totals:

Total Cars Handled	Sales and Purchase Value of Cars Handled	Commissions Under Secretary of Agriculture's Order	Commissions Under Sec'y of Agri.'s Order Excluding Increase in Dealers and Speculators
127,811.99	$235,391,871.83	$1,983,433.42	$1,921,271.23

Exhibit 103 discloses the ratio of commissions to value of sales and purchases, excluding firms Nos. 17, 32 and 60, is .83%.

[fol. 115] 35. Exhibit 104 Shows Cost of Handling Live Stock in 1925 By the Fifty-six Commission Firms as Audited By the Auditors of John M. Gilchrist Company.—Exhibit 104 is a statement reflecting the costs of handling live stock by the fifty-six commission firms during the year 1925 as ascertained by auditors of the John M. Gilchrist Company. The costs are classified under the following headings: (a) Salaries, selling and buying; (b) yard salaries; (c) other salaries; (d) advertising; (e) travel and entertaining; (f) exchange assessments and dues; (g) other expenses; (h) other deductions; (i) additional rent, and (j) interest on investment.

In paragraph 18 of the Secretary's conclusions upon which he based his order of November 19, 1926, he found the fair market value of the services per year of good live stock salesmen to be as follows:

Cattle salesmen	$5000.00
Sheep salesmen	5000.00
Hog salesmen	4000.00

The Government audits contained a statement of salaries received by both salesmen and owners, segregated as to their duties, i. e., whether they were hog salesmen, cattle salesmen, or what they were, and also a statement of net worth of the firms as of December 31, 1925. The Government audits included in the profit and loss statements salaries of owners only if they had been set up on the books of the firms. There were eleven firms out of the fifty-six which had not set up salaries for owners, and consequently the operations for the years as shown by the Government audits, were not charged with these expenses.

The Gilchrist auditors, in preparing Exhibit 104, eliminated all owners' salaries as detailed in the fifty-six Government audits, and applied as salaries for resident owners those found by the Secretary as above stated. The Gil-
[fol. 116] christ auditors also eliminated the following: (a) clearance commissions, and all expenses incidental to main-

taining this class of business; (b) life insurance premiums; (c) Exchange fines, and (d) chauffeur's salaries.

To the costs detailed in the fifty-six Government audits, the Gilchrist auditors added additional rent of $52,628.40, and interest on investment of $50,405.52, allocating the increased rent per firm on the same ratio that the rent which was paid in the year 1925 bore to the total rent paid by the fifty-six firms during the year 1925.

In the preparation of Exhibit 104, the Gilchrist auditors included in the costs of handling live stock for the year 1925 the same amount of depreciation as detailed in the Government audits. Depreciation was reflected in the Government audits only if it had been set up on the commission firm's books. Exhibit 104 shows the total costs of the fifty-six firms for handling live stock in the year 1925 to have been $2,036,722.02.

Exhibit 104 reflects the total expenses of advertising to have been $220,707.09 and the total expense for travel and entertainment to have been $104,556.93. If the total of these two items of expense, $325,264.02, be divided by the total number of cars of live stock handled on the market for that year, 127,811.99, the per car expense of these two items alone would amount to $2.54.

36. Exhibit 105 Shows Result to Each of the Fifty-six Commission Firms if Adjusted Cost of Handling Live Stock for 1925 Be Applied to Commissions Which Would Have Been Realized Under Secretary's Order of November 19, 1926, and Also Under Said Order, Excluding Increase Applicable to Dealers and Speculators and Including Commissions Actually Received Under Tariff in Effect in 1925.—Exhibit 105 reflects what the result would be to each one of the fifty-six commission firms doing business at the [fol. 117] Union Stock Yards if the adjusted costs of handling live stock by said firms for the year 1925, as shown by Exhibit 104, be applied to (1) the commissions which would have been realized under the Secretary's order of November 19, 1926, and (2) the commissions which would have been realized on the basis of the Secretary's order, excluding that portion of the tariff applicable to dealers and speculators, and including instead thereof the commissions actually received for such business under the tariff in effect during the year 1925.

The black figures upon the exhibit denote the firms which would have had revenue in excess of the cost of handling. The red figures denote the difference between the commissions under the Secretary's order and the cost of handling, or, in other words, show the excess of costs over commissions which would have been received.

As appears from the last page of the exhibit, the total losses of such of the firms as would have had losses applying the Secretary's order of November 19, 1926, would have been $168,110.50, and the total gains of firms showing gains would have been $114,821.90. As also shown upon the last page of the exhibit, the total losses of firms showing losses, applying the Secretary's order of November 19, 1926, excluding that portion thereof applicable to dealers and speculators, and including instead thereof the commissions actually received for such business under the tariff in effect during the year 1925, would have been $196,077.41, and the total gains of those firms showing gains would have been $80,626.62.

This exhibit discloses that in the first alternative above mentioned only twenty firms out of the fifty-six would have had revenue in excess of costs, and that, in the second alternative above mentioned only fifteen out of the fifty-six would have received revenue in excess of costs.

[fol. 118] 37. Exhibit 106 shows the additional depreciation which could have been set up as an item of expense, and which is neither included in the government audits nor reflected in exhibits 104 or 105.—Exhibit 106 was prepared by the Gilchrist auditors for the purpose of showing what additional depreciation could have been set up as an item of expense and which was neither included in the Government audits nor reflected in Exhibits 104 or 105. As has heretofore been stated in Finding 35, depreciation was reflected in the Government audits only if it had been set up on the commission firm's books. Exhibit 106 discloses that no depreciation was set up in the Government audits for thirty-six of the fifty-six commission firms. The Gilchrist auditors, as shown by Exhibit 106, computed for depreciation a total of $6,194.92 additional to the depreciation of $5,661.84 set up in the Government audits. This additional depreciation is not reflected in either Exhibit 104 or Exhibit 105.

38. Exhibit 107 shows the additional invested capital represented by exchange memberships of those commission firms who had not entered the value of their memberships on their books, and which were not reflected in the government audits.—Exhibit 107 reflects the value of the exchange memberships of such of the fifty-six firms as were not reflected by the Government audits. The Government auditors in their audits reflected the value of Exchange memberships only in the instances where the Exchange memberships had been set up by the firms as an asset upon their books. Exhibit 107 shows a total additional investment of $312,000.00, which had not been set up on the books of the commission firms, estimated at $4000.00 per membership, which the Gilchrist auditors were advised was the fair value for the year 1925 for an Exchange membership. Exhibit 107 was built for the purpose of showing that the actual invested capital as reflected in the Govern- [fol. 119] ment audits, is not the total capital that the fifty-six commission firms had invested for the year 1925. This additional invested capital shown on Exhibit 107 is not, however, reflected in the costs shown on Exhibit 104.

39. Exhibit 111 shows the total cost per car of handling live stock for the year 1925 by each of the fifty-six commission firms as ascertained by the Gilchrist auditors.—Exhibit 111 reflects the total cost per car of handling live stock by each of the fifty-six commission firms during the year 1925 as ascertained by the Gilchrist auditors. It shows: (a) Number of cars handled; (b) cost of handling, being the adjusted cost shown by Exhibit 104; (c) cost per car; (d) the total commissions which would have been received under the Secretary's order of November 19, 1926, and under said order, excluding increase in dealers and speculators, and including in lieu thereof the actual commissions received on such sales under the tariff in effect in 1925; (e) the average commissions per car on both bases, and (f) the net results per car on both bases.

Exhibit 111 shows the general average cost per car of handling live stock to have been $15.94; the general average commissions which would have been received, applying the Secretary's order in the alternatives indicated in subdivision (d) above, would have been $15.52 and $15.03, respectively.

The black figures in the last two columns of the exhibit show the firms which would have had a profit per car. The red figures show the firms which would have had a loss per car. Only twenty firms out of the fifty-six are shown by this exhibit as having a profit per car in the first alternative, and only fifteen firms out of the fifty-six as having a profit per car in the second alternative stated in subdivision (d) above.

[fol. 120] The average of the net results shown in the last two columns of the exhibit take into account the instances where there was a profit and show that the fifty-six firms as an average would on the 1925 business, applying the Secretary's tariff in the first alternative, have lost 42 cents per car, and applying the Secretary's tariff in the second alternative, would have lost 91 cents per car.

40. Exhibit 118 is an audit of the business of one of plaintiffs, Tagg Brothers & Moorhead, for the year ending March 31, 1927.—Exhibit 118 is a separate audit of the business of one of the plaintiffs, Tagg Brothers & Moorhead, for the year ending March 31, 1927. This audit reflects the actual commissions received by said plaintiff under Tariff No. 2, which was in effect during the whole period covered by the audit, and also reflects the commissions which would have been received on the same business if the Secretary's tariff has been applied, with the exception that the advance was not figured on the "seconds," i.e., the "seconds" being taken at the rate fixed in Tariff No. 2.

This exhibit shows the total live stock handled reduced to car lots, or in other words, includes "drive ins" and "truck ins," and also shows the net profit under Tariff No. 2, applying the salaries as actually set up on the books of the company, and the net loss which would have been sustained if the business had been conducted under the Secretary's order, with the exception of the "seconds" being kept on the rates in Tariff No. 2.

The total number of cars handled was 4446. The total commissions actually received on the business under Tariff No. 2 were $87,937.93. The total expense of the business was $86,196.02, which, deducted from the total commissions, left the plaintiff a net profit of $1741.91.

If the business had been conducted under the Secretary's tariff, with the exception of the "seconds" being kept on [fol. 121] the rates in Tariff No. 2, the commissions which would have been received would have been $76,823.80, which, deducted from the total expense of the business during the period, of $86,196.02, would have shown a net loss of $9372.22.

This firm had one owner cattle salesman at $7200.00, a year, one owner hog salesman at $6600.00 a year and one owner sheep salesman at $6600.00 a year. The net profit and net loss hereinabove stated are such profit and loss after applying the salaries as actually set up on the books of the company as heretofore stated in this finding.

Mr. W. B. Tagg, the manager of the corporation, testified that the company could not continue in business if the Secretary's tariff went into effect and remained in effect, that the company would either have to do business at a loss or quit.

41. Exhibit 119 is an audit of the business of one of plaintiffs, R. M. Laverty, the sole owner of the business conducted as Laverty Brothers, for the year ending March 31, 1927.—Exhibit 119 is a separate audit of the business of one of the plaintiffs, R. M. Laverty, doing business as Laverty Brothers, for the year ending March 31, 1927. This audit, as in the case of Exhibit 118, reflects the number of cars handled, the actual commissions received by said plaintiff under Tariff No. 2, for the period mentioned, and the total expense, except that plaintiff did not take any salary. Exhibit 119 shows a total of 2225 cars was handled; the actual commissions received were $39,606.37; the total expense, not including any salary for said plaintiff, was $32,981.82, leaving the plaintiff for compensation and profit $6624.55. This plaintiff is manager and active hog salesman.

This exhibit also shows that the receipts from the business under the Secretary's tariff would have amounted to $34,748.45. Deducting therefrom the total expense of [fol. 122] $32,981.82 would have left this plaintiff a profit for the year's business of $1766.63. This plaintiff in making up his expenses in the foregoing computation figured his office rent at the same rate as he had been paying in the old Exchange Building. He was paying increased

rent from July 1, 1926. The rental paid in the old building was $70.00 per month, and the rental for the same amount of space in the new building was $137.50 per month.

42. Exhibit 122 Shows the Income or Profit of any kind Received by Each Owner of the Fifty-Six Commission Firms, Plaintiffs in the Case at Bar, for the year 1925.—Exhibit 122, reflects their income or profits of any kind received by each owner of fifty-six of the commission firms, plaintiffs in the suit at bar, for the year 1925 under the tariff in effect, viz., Tariff No. 1. The selling costs are on the same basis as shown in Exhibit 104, with the exception that the auditors used what each member of the firm, or owner of the firm, or stockholder in the corporation got out of the business, either in the way of profits or interest on the investment, and the salary that he drew from the business, after all expenses were deducted. Interest on the investment was not set up as an expense, and, therefore, to that extent increased the income of the firm. The summary on the fourth page of the exhibit reflects the following:

Owners	Income		
[fol. 123] 2 Received over			$20,000
1 Received from	$19,000	to	$20,000
3 Received from	16,000	to	17,000
1 Received from	15,000	to	16,000
2 Received from	14,000	to	15,000
4 Received from	12,000	to	13,000
4 Received from	11,000	to	12,000
2 Received from	10,000	to	11,000
2 Received from	9,000	to	10,000
3 Received from	8,000	to	9,000
4 Received from	7,000	to	8,000
13 Received from	6,000	to	7,000
16 Received from	5,000	to	6,000
19 Received from	4,000	to	5,000
15 Received from	3,000	to	4,000
8 Received from	2,000	to	3,000
9 Received from	1,000	to	2,000
9 Received less than			$1,000
10 Had a loss.			

The total number of owners is shown on this exhibit as 127, with average income or loss as follows.

28 owners with average income of	$12,493.26
63 owners with average income of	4,832.63
26 owners with average income of	1,508.37
10 owners with average loss of	1,125.12

43. Exhibit 123 shows what would have been received by each Owner of Fifty-six Commission Firms, Plaintiffs in Suit at Bar, for the year 1925 if the Secretary's order had been in effect, with the adjusted expense excluding interest on the Investment, and using the Owner's actual selling and buying salaries instead of those set up by the Secretary.—Exhibit 123 reflects what would have been received by each owner of the fifty-six commission firms, plaintiffs in the suit at bar, as income if the Secretary of Agriculture's order of November 19, 1926, had been in effect, with the adjusted expense excluding interest on the [fol. 124] investment, and using the owner's actual selling and buying salaries instead of those set up by the Secretary of $5,000 for cattle salesmen, $5,000 for sheep salesman and $4,000 for hog salesmen.

In this exhibit the rate to dealers and speculators was applied as prescribed by the Secretary's order. In making up the expenses the actual salaries which the owners allowed themselves as salesmen were included, together with the profit, if there was a profit, from the whole business. The fourth page of the exhibit contains a summary in which the average income of the owners is classified as follows:

Owners	Income
2 Received from	$15,000 to $16,000
1 Received from	14,000 to 15,000
2 Received from	13,000 to 14,000
2 Received from	12,000 to 13,000
3 Received from	11,000 to 12,000
2 Received from	10,000 to 11,000
1 Received from	9,000 to 10,000
5 Received from	8,000 to 9,000
6 Received from	7,000 to 8,000
9 Received from	6,000 to 7,000

Owners	Income	
11 Received from	5,000 to	6,000
12 Received from	4,000 to	5,000
20 Received from	3,000 to	4,000
13 Received from	2,000 to	3,000
15 Received from	1,000 to	2,000
10 Received less than		1,000
13 Sustained a loss.		

The total number of owners is shown on this exhibit as 127, with average income or loss as follows:

24 owners with an average income of	$10,408.50
52 owners with an average income of	4,644.45
38 owners with an average income of	1,573.57
13 owners with an average loss of	1,619.81

[fol. 125] 44. Exhibit 123-a shows Result to each Owner of the Firms shown in Exhibit 123 of Deducting from the net profits of each Owner as there shown the Amount of Interest on Investment and difference between Secretary's Order and Rates actually Charged at present time to Dealers and Speculators.—Exhibit 123-a discloses what would have been the net profits of each owner shown in Exhibit 123 if there had been deducted from the net profits of each owner as shown in that exhibit the amount of interest on investment and the difference between the Secretary's order and the rate actually charged to dealers and speculators. The last page of the exhibit contains a summary in which the average income of the owners in classified as follows:

Owners	Income	
2 Received from	$13,000 to	$14,000
1 Received from	12,000 to	13,000
1 Received from	11,000 to	12,000
2 Received from	10,000 to	11,000
3 Received from	9,000 to	10,000
4 Received from	8,000 to	9,000
5 Received from	7,000 to	8,000
8 Received from	6,000 to	7,000
4 Received from	5,000 to	6,000
13 Received from	4,000 to	5,000

Owners	Income	
19 Received from	3,000 to	4,000
21 Received from	2,000 to	3,000
19 Received from	1,000 to	2,000
9 Received less than		$1,000
16 Sustained a loss.		

The total number of owners is shown on this exhibit as 127, with average income or loss as follows:

18 owners with average income of	$9,457.80
44 owners with average income of	4,529.80
49 owners with average income of	1,737.93
16 owners with average loss of	1,818.13

45. Total Cars of Cattle and Calves, Hogs and Sheep Handled on the Omaha Live Stock Market for the year [fol. 126] 1925.—The total cars of cattle and calves, hogs and sheep handled on the Omaha live stock market for the year 1925 is as follows:

71,419.48 cars of cattle and calves.
45,643.50 cars of hogs.
10,749.01 cars of sheep.

46. "Fair market value of the services of a good salesman" of live stock as found by secretary, and summarized cost account representing what he found to be "reasonable cost of selling in the year 1925 on the Omaha market a car of cattle, one of hogs and one of sheep."—As heretofore stated (Master's Finding 35) the Secretary in paragraph 18 of his conclusions found the fair market value of the services per year of good live stock salesmen to be as follows:

Cattle salesmen	$5,000.00
Sheep salesmen	5,000.00
Hog salesmen	4,000.00

The Secretary in paragraph 20 of his conclusions, upon which he based his order of November 19, 1926, summarizes "the cost account, which represents the reasonable cost of selling in the year 1925 on the Omaha market a car of cattle, one of hogs and one of sheep" as follows:

Item	Cattle	Hogs	Sheep
Yardmen's Salary	$1.75	$1.50	$1.50
All other salaries	2.00	1.60	1.80
Travel, entertainment, advertising, etc.	2.00	1.50	2.25
Overhead, including increased rental of $54,000	1.75	1.50	1.75
Exchange Assessments and Dues	.25	.25	.25
Total	$7.75	$6.35	$7.55
Salesmanship	5.00	3.00	5.00
Interest	.50	.50	.50
Total cost	$13.25	$9.85	$13.05

[fol. 127] 47. Comparison of result of applying secretary's cost of salesmanship to business of the fifty-six commission firms for year 1925 with cost of salesmanship shown by exhibit 104, Gilchrist audit.—If the cost of salesmanship as found by the Secretary, to-wit: $5.00 per car for cattle, $3.00 per car for hogs and $5.00 per car for sheep, be applied to the cars of stock handled on the Omaha market in the year 1925 as hereinbefore set forth (Master's Finding 45), the result would be as follows:

71,419.48 cars of Cattle and calves at $5.00 per car	$357,097.40
45,643.50 cars of hogs at $3.00 per car	136,930.50
10,749.01 cars of sheep at $5.00 per car	53,745.05
Total	$547,772.95

Exhibit 104, Gilchrist audit, shows selling salaries for "resident owners" and "employe salesmen" of the fifty-six commission firms audited, for the year 1925. In setting up the selling salaries for "resident owners" the Gilchrist auditors applied the salary of $5,000.00 per year for cattle salesmen, $5,000.00 per year for sheep salesmen and $4,000.00 per year for hog salesmen, which the Secretary in paragraph 18 of his findings found to be the fair market value of the services of a good salesman in those respective lines. The selling salaries of "employe salesmen" of the fifty-six firms were taken by the Gilchrist auditors as

said employe salaries were actually set up on the commission firm's books. These "employe salesmen" salaries are reflected in the Government audits also as they are set up on the commission firm's books. It thus appears that the Gilchrist auditors in Exhibit 104 set up selling salaries of "resident owners" in accordance with the "fair market value" of the services of good salesmen in the respective lines as found by the Secretary, and applied the "employe salesmen" salaries the same as they were reflected in the Government audits.

[fol. 128] The total selling salaries of "resident owners" as shown by Exhibit 104 amount to $424,333.33. The total selling salaries of "employe salesmen" as reflected by that audit amount to $417,916.82. The grand total of selling salaries, both for "resident owners" and "employe salesmen" is $842,250.15; whereas, applying the cost of salesmanship per car, as found by the Secretary in his summarized cost account, to the total number of cars of live stock handled on the market in the year 1925, the total cost of salesmanship as shown in this finding is $547,772.95. Or in other words if the cost of salesmanship as set up in the summarized cost account of the Secretary be applied to the business of the fifty-six commission firms for the year 1925, such total cost, $547,772.95, falls short of the cost of salesmanship as reflected by the Gilchrist audit, made in accordance with the findings of the Secretary, by $294.477.20.

48. The Secretary in arriving at his so-called "reasonable cost of selling" live stock in the year 1925, disallowed items of expense actually incurred by plaintiffs.—In paragraph 19 of the Secretary's conclusions he sets forth an analysis of the "expenditures for business getting" of the commission firms as classified by him in paragraph 12 of his conclusions. This classification is as follows:

Group A, each firm of which handled above 3500 cars of live stock.

Group B, each firm of which handled between 2000 and 3500 cars of live stock.

Group C, each firm of which handled between 1000 and 2000 cars of live stock.

Group D, each firm of which handled between 500 and 1000 cars of live stock, and

Group E, each firm of which handled less than 500 cars of live stock.

His analysis of "expenditures for business getting" is as follows:

[fol. 129]

Group	Lowest Percentage of gross commissions spent for business getting	Highest Percentage of gross commissions spent for business getting	Average Percentage of gross commissions spent for business getting
A	11.96%	29.99%	17.56%
B	9.57	16.51	12.96
C	4.27	22.81	14.31
D	4.51	28.73	12.16
E	1.95	26.48	11.60
Average for all respondents			14.85

Notwithstanding this analysis the Secretary finds "10% of gross commissions received is a reasonable expenditure for business getting," and fixes the allowances of such expenditures at $2.00 per car for cattle and calves, $1.50 per car for hogs and $2.25 per car for sheep (Master's Finding 46).

49. Comparison of result of applying secretary's cost for "business getting" to business of fifty-six commission firms for year 1925 with cost of "business getting", as shown by exhibit 104, Gilchrist audit.—If the per car allowances of the Secretary for "travel, entertainment, advertising, etc.," (Master's Finding 46) be applied to the number of cars of stock handled on the market in 1925 as hereinbefore set forth (Master's Finding 47) the total allowable expense under the Secretary's order for "travel, entertainment, advertising, etc.," would be for 71,419.48 cars of cattle and calves $142,838.96, for 45,643.50 cars of hogs $68,465.25, and for 10,749.01 cars of sheep $24,185.27, making a grand total of said items of expense for all classes of stock named of $235,489.48, which, divided by the total number of cars of live stock handled on said market in said year, 127,811.99, gives the average per car expense for the items of "travel, entertainment, advertising, etc.," of $1.84; whereas the per car expense of said items as shown by Exhibit 104, Gilchrist audit, is $2.54 (Master's Finding 35). In other words the Secretary, in setting up his cost

[fol. 130] account of reasonable cost of selling, disallowed actual items of expense incurred by the commission firms for "travel, entertainment, advertising, etc.," resulting in an average per car allowance by him of $0.70 per car less than the actual expense, being the difference between $2.54, the per car expense for said items as shown by Exhibit 104, and $1.84, the average per car expense reached by applying his allowances to the actual number of cars of stock handled by the commission firms in the year 1925.

50. Comparison of Result of Applying Secretary's Total Reasonable Cost of Selling to Business of Fifty-Six Commission Firms for Year 1925 With Cost of Selling as Shown by Exhibit 104, Gilchrist Audit.—The reasonable cost of selling in the year 1925 on the Omaha market a car of cattle, one of hogs and one of sheep, as found by the Secretary, is set forth in paragraph 20 of his findings (Master's Finding 46). Such "reasonable cost of selling" is $13.25 per car for cattle and calves, $9.85 per car for hogs, and $13.05 per car for sheep.

If the aforesaid costs be applied to the number of cars of stock handled on the market in 1925 as hereinbefore set forth (Master's Finding 45) the total cost would be, for the 71,419.48 cars of cattle and calves $946,308.11, for the 45,643.50 cars of hogs $449,588.47 and for the 10,749.01 cars of sheep $140,274.58, making a grand total of the Secretary's "reasonable costs of selling" for all of said stock, $1,536,171.16, which, divided by the total number of cars of live stock handled on the market in said year, 127,811.99, gives an average per car cost of selling of $12.01; whereas Exhibit 111, Gilchrist audit, shows the general average actual cost per car of handling live stock by the commission firms for the year 1925, to have been $15.94 (Master's Finding 39). In other words, the Secretary, in setting up his "reasonable cost of selling in the year 1925" live stock on the Omaha market, allowed per car costs which, applied to [fol. 131] the business of fifty-six commission firms for the year 1925 gives an average per car cost less than the actual cost by $3.93.

51. Comparison of Result of Applying Secretary's Allowances Per Car for "All Other Salaries" to Business of Fifty-Six Commission Firms for Year 1925 with "Other

Salaries" as Shown by Exhibit 104, Gilchrist Audit.—The Secretary in setting up his cost account of "reasonable cost of selling live stock on the Omaha market in the year 1925" allowed for "all other salaries" $2.00 per car for cattle, $1.60 per car for hogs and $1.80 per car for sheep (Master's Finding 46).

If these per car allowances be applied to the business of the commission firms on the Omaha market for the year 1925 the result would be as follows: 71,419.48 cars of cattle at $2.00 per car $142,838.96, 45,643.50 cars of hogs at $1.60 per car $73,029.60, and 10,749.01 cars of sheep at $1.80 per car $19,348.21, or a grand total of $235,216.77, which, divided by the total number of cars, 127,811.99, would give an average per car allowance for the item of "all other salaries" of $1.84; whereas Exhibit 104 Gilchrist audit, shows the total of "other salaries" as $278,940.77, which, divided by the number of cars, 127,811.99, gives an average per car allowance of $2.18. In other words the Secretary in setting up his cost account of reasonable cost of selling, allowed $0.34 per car less than the actual outlay by the commission firms for "other salaries" for the year 1925.

52. Comparison of Result of Applying Secretary's Allowances Per Car for "Overhead, Including Increased Rental," to Business of Fifty-Six Commission Firms for the Year 1925 with Actual Overhead as Shown by Exhibit 104, Gilchrist Audit.—The Secretary in setting up his cost account of "reasonable cost of selling live stock on the [fol. 132] Omaha market in the year 1925" allowed for "overhead, including increased rental of $54,000," $1.75 per car for cattle, $1.50 per car for hogs, and $1.75 per car for sheep (Master's Finding 46).

If the aforesaid per car allowances be applied to the business of the commission firms on the Omaha market for the year 1925 the result would be as follows: 771,419.48 cars of cattle at $1.75 per car, $124,984.09, 45,634.50 cars of hogs at $1.50 per car $68,465.25, and 10,749.01 cars of sheep at $1.75 per car $18,810.76, or a grand total of $212,260.10, which, divided by the total number of cars, 127,811.99, would give an average per car allowance for the item of "overhead, including increased rental of $54,000" of $1.66; whereas Exhibit 104, Gilchrist audit, shows the actual allowances as "other expenses" $189,912.12, "other deduc-

tions'' $14,624.99, and ''additional rent'' $52,628.40, or a grand total of $257,165.51, which, divided by the total number of cars, 127,811.99, gives an average per car allowance of $2.01. In other words the Secretary in setting up his cost account of reasonable cost of selling, allowed an average of $0.35 per car less than the average actual per car outlay by the commission firms for said item of overhead in the year 1925.

53. Secretary's Cost Schedule of ''Reasonable Cost of Selling'' Does Not Include an Item for Supervision.—One item going to make up the cost of selling is that of supervision, which is the item of office management. Some of the firms do not employ an office manager, the work of office manager being done by an owner member of the firm in addition to the work performed by him in selling and buying. The time spent in office management by two commission men has been heretofore found by the Master (Master's Finding 17). Other firms employ an office manager whose salary is fixed by bargaining. Eleven of the fifty-six firms have office managers. From the audits of those firms, taking the number of cars of cattle, hogs and sheep handled, and the managers' salaries paid allocated to [fol. 133] each of said classes of live stock, a per car cost of the item of supervision as to each of said classes of stock may be obtained. The figures have been tabulated at page 50 of petitioners' brief as follows:

	Cars Handled			
Firm No.	Cattle	Hogs	Sheep	Total
4	2,489.08	1,658.66	58.64	4,206.38
8	3,538.86	1,299.75	412.74	5,251.35
13	4,141.91	1,183.00	1,222.26	6,547.17
18	3,061.39	1,134.54	2,204.79	6,400.72
23	937.18	797.30	682.37	2,416.85
25	712.34	1,811.57	10.48	2,534.39
28	3,215.80	1,820.78	421.69	5,458.27
31	1,784.34	1,071.59	63.14	2,919.07
34	1,701.90	1,720.89	63.62	3,486.41
43	2,463.85	2,333.75	275.52	5,073.12
48	2,787.78	1,281.19	1,063.00	5,132.03
Total	26,834.43	16,113.02	6,478.31	49,425.76

Managers' Salaries Paid

Firm No.	Cattle	Hogs	Sheep	Total
4	$3,550.04	$2,364.49	$85.47	$6,000.00
8	3,032.52	1,113.74	353.74	4,500.00
13	3,321.28	951.67	977.05	5,250.00
18	1,674.01	620.38	1,205.61	3,500.00
23	1,398.43	1,185.21	1,021.65	3,605.29
25	1,349.13	3,531.03	19.84	4,800.00
28	8,682.20	4,974.36	1,143.40	14,799.96
31	1,941.82	1,286.81	71.37	3,300.00
34	2,050.24	2,073.12	76.64	4,200.00
43	5,245.20	4,968.26	586.54	10,800.00
48	3,911.12	1,797.46	1,491.42	7,200.00
Total	$36,155.99	$24,866.53	$7,032.73	$67,955.25

[fol. 134]

Supervision—per Car Cost

Firm No.	Cattle	Hogs	Sheep	All Species
4	$1.42	$1.42	$1.42	$1.42
8	.85	.85	.85	.85
13	.80	.80	.80	.80
18	.54	.54	.54	.54
23	1.49	1.49	1.49	1.49
25	1.89	1.89	1.89	1.89
28	2.70	2.70	2.70	2.70
31	1.13	1.13	1.13	1.13
34	1.20	1.20	1.20	1.20
43	2.12	2.12	2.12	2.12
48	1.40	1.40	1.40	1.40
Average	$1.34	$1.54	$1.08	$1.38

From the audits of those firms which are branch firms, or in other words operate as branch houses, which are four in number, data has been tabulated at page 50 of plaintiffs' brief for the purpose of showing the per car cost of supervision for said four branch firms. The figures so tabulated are as follows:

Cars Handled

Firm No.	Cattle	Hogs	Sheep	Total
18	3,061.39	1,134.54	2,204.79	6,400.72
23	937.18	797.30	682.37	2,416.85
31	1,784.34	1,071.59	63.14	2,919.07
34	1,701.90	1,720.89	63.62	3,486.41
Total	7,484.81	4,724.32	3,013.92	15,223.05

Managers' Salaries Paid

Firm No.	Cattle	Hogs	Sheep	Total
18	$1,674.01	$ 620.38	$1,205.61	$3,500.00
23	1,398.43	1,185.21	1,021.65	3,605.29
31	1,941.82	1,286.81	71.37	3,300.00
34	2,050.24	2,073.12	76.64	4,200.00
Total	$7,064.50	$5,165.52	$2,375.27	$14,605.29

[fol. 135] Supervision—per Car Cost

Firm No.	Cattle	Hogs	Sheep	All Species
18	$0.54	$0.54	$0.54	$0.54
23	1.49	1.49	1.49	1.49
31	1.13	1.13	1.13	1.13
34	1.20	1.20	1.20	1.20
Average	$0.94	$1.09	$0.78	$0.96

In the appendix to defendants' brief it is said: "The Secretary allowed 10 cents per car to cover owner management services, as shown on Plaintiff's books. As in the case of salesmanship, he could not be sure that owners were rendering particular services to their business, unless there was something in the evidence to show it."

It appears from the facts heretofore set out in this finding that the stated allowance of $0.10 per car by the Secretary to cover owner management services was entirely inadequate to cover the per car cost of supervision.

54. Secretary's Cost Schedule of "Reasonable cost of Selling" Does Not Include an Item for Bad Debts.—The Secretary did not include in his items of cost of selling any stated allowance for bad debts. It appears from the discussion of the matter in the appendix of defendants' brief, page 95, that no specific allowance was made by the Secretary for such item for the reason that in his opinion bad debts were incurred primarily in the operation of the live stock loan business, which he did not consider a stockyard service, and that whatever live stock loan business expense the Secretary included in his commission business expense he included because of the difficulty of ascertaining it, and not because he thought it was proper.

55. The Secretary in the Preparation of the Schedules Prescribed by Him in His Order of November 19, 1926, Did Not Take into Account Any "Going Concern Value."—It [fol. 136] appears from the appendix to defendants' brief, pp. 108-9, that the Secretary in building his schedule of rates prescribed in his order of November 19, 1926, did not take into account any "going concern value" for any of the commission firms. This is justified by him on the ground that no claim for such a capital allowance was made either at the hearing before the Examiner or before the Special Master, and that the Secretary was warranted in assuming

plaintiffs' books accurately represented the condition of their business, and if such were not the case and they felt that certain elements of "going concern value" not shown on their books should be included, there was ample opportunity afforded them in the Secretary's hearings to establish that fact by appropriate evidence; and that they did not do that either in the hearing before the Examiner or in the Master's hearing.

The record in the case at bar does not contain evidence from which "going concern value" for the fifty-six commission firms could be accurately determined.

56. The full rates which the Secretary's order of November 19, 1926, permits the commission firms to charge on sales for dealers and speculators would not permanently increase the income of the commission firms.—The evidence establishes that the charging by the commission firms to dealers and speculators of the full rates permitted by the Secretary's order of November 19, 1926, would not result in any permanent increase in the income of the commission firms, as the difference between the rates charged on that class of business under the tariff in effect in 1925, and the full rate permitted by the Secretary's schedules would ordinarily amount to more than the net profit of the traders and speculators, and that eventually the effect of such increase would be to put the traders and speculators out of business.

57. The evidence did not justify the Secretary in disal- [fol. 137] lowing items of expense actually incurred by plaintiffs, in arriving at his "reasonable cost of selling," as disclosed by Master's Finding 48.—As has been found heretofore (Master's Finding 48) the Secretary in arriving at his "reasonable cost of selling" live stock in the year 1925, disallowed expenditures of plaintiffs for business getting, and this he did on the ground that a very substantial part of the expenditures did not result in bringing new business to the market, but merely in shifting consignments from one commission man to another (Secretary's Conclusions, paragraph 19).

The evidence before the Secretary did not warrant him in disregarding expenses actually incurred for advertising. There is in the record no evidence indicating bad faith on

the part of any of the commission firms in their expenditures for advertising, and, as is pointed out in the Conclusions of Law upon this branch of the case at bar, the Secretary was not justified in substituting his judgment as to the expenditures to be made for business getting for that of the managers of said commission firms, as was done by him.

58. Number of owners who are classified as cattle, sheep and hog salesmen in Government Audits 7 to 65, both inclusive, and analysis of yearly salaries of such owner-salesmen as shown by said audits.—In government audits 7 to 65, both inclusive, seventy-six owners of commission firms doing business at the Union Stockyards, Omaha, Nebraska, in the year 1925, are classified as cattle, sheep and hog salesmen. These audits show the amount of salaries of said owner-salesmen, respectively, as set up on the books of said commission firms. But as heretofore stated, salaries of owner cattle, sheep and hog salesmen are not shown on these Government audits except in cases where such salaries are set up on the commission firms' books (Master's Finding 35). As has also been heretofore stated, the [fol. 138] John M. Gilchrist Company made audits of fifty-six of said firms (Master's Finding 33), while the Government audits deal with fifty-nine firms (Master's Finding 28). Eleven of the fifty-six firms audited by the John M. Gilchrist Company had not set up on their books salaries for owner-salesmen (Master's Finding 35), and, therefore, the Government audits do not disclose salaries of owner-salesmen for eleven of said commission firms.

As has also been heretofore stated, the Secretary in his conclusions upon which he based his order of November 19, 1926, found the fair market value of the services per year of good live stock salesmen of the above classes to be as follows (Master's Finding 35):

Cattle Salesmen	$5,000.00
Sheep Salesmen	5,000.00
Hog Salesmen	4,000.00

The aforementioned Government audits show the highest and lowest yearly salaries of owner-salesmen of the above classes as set up in said audits to be as follows:

Owner-Salesmen	Highest salaries	Lowest salaries
Cattle	$11,700.00	$1,800.00
Sheep	7,000.00	3,600.00
Hog	10,800.00	1,500.00

Said Government audits also disclose the number of owner-salesmen of said classes having yearly salaries above and below the fair market value of the services of good live stock salesmen of such classes as found by the Secretary to be as follows:

Owner-Salesmen	Number above salary fixed by Secretary	Number below salary fixed by Secretary
Cattle	22 Above $5,000.00	26 Below $5,000.00
Sheep	2 Above $5,000.00	3 Below $5,000.00
Hog	13 Above $4,000.00	10 Below $4,000.00

That the services rendered by the owners of said commission firms are personal services is shown by the record [fol. 139] (Master's Finding 14, 17 and 20), as well as by the Secretary's conclusions, par. 20, wherein he finds:

"The business done by the respondents is personal service and not capitalistic, though some capital is desirable to enable them to handle their remittances expeditiously, and for office equipment."

Mr. A. F. Stryker, testifying for plaintiffs, said that without uniform rates the market would soon become an uncontrollable scramble for business, resulting in a chaotic market condition and a development of dishonesty, with resultant losses to its patrons.

The Secretary in building his schedules of maximum charges, used for owner-salesmen the fair market value of the services per year of good cattle, sheep and hog salesmen as found by him, instead of the actual salaries of said owner-salesmen as set up on the books of the commission firms, and, conceding the necessity for uniform rates of charges on said market, the Secretary was required to use some uniform standard for the services of said owner-salesmen in prescribing his maximum rates of charges by said market agencies.

The Act of Congress involved in the case at bar must, therefore, be construed as permitting and of necessity

requiring the fixing by the Secretary of Agriculture of the maximum compensation of owner-salesmen of said commission firms for their personal services in the selling and buying of live stock.

59. The rates prescribed by the Secretary in his order of November 19, 1926, are confiscatory.—The record in the case at bar establishes the following facts:

(a) If the cost of salesmanship as set up in the summarized cost account of the Secretary be applied to the business of the fifty-six commission firms for the year 1925, [fol. 140] such total cost of salesmanship falls short of the actual cost of salesmanship (even using instead of actual salaries for resident owners the so-called fair market value of services of good live stock salesmen as found by the Secretary) by $294,477.20, or an allowance by the Secretary of $2.30 per car for salesmanship less than actual cost of salesmanship (Master's Finding 47).

(b) If the Secretary's cost per car for "business getting" as set up in his cost account, be applied to the business of the fifty-six commission firms for the year 1925, the result is an average per car allowance by him for this item of expense of $0.70 less per car than the average actual per car expense of said commission firms for said item of cost of "business getting" (Master's Finding 49).

(c) If the Secretary's "reasonable cost of selling" be applied to the business of the fifty-six commission firms for the year 1925, the result is an average per car allowance by him of $3.93 less than the average actual per car cost of said fifty-six commission firms for handling live stock in the year 1925 (Master's Finding 50).

(d) If the Secretary's allowances per car for "all other salaries" be applied to the business of the fifty-six commission firms for the year 1925 the result is an average per car allowance for such items of $0.34 per car less than the average actual per car outlay by said commission firms for "other salaries" for the year 1925 (Master's Finding 51).

(e) If the Secretary's allowance per car for "overhead including increased rental of $54,000" be applied to the

business of the fifty-six commission firms for the year 1925 the result is an average per car allowance for such item of $0.35 per car less than the average actual per car outlay by the commission firms for said item in the year 1925 (Master's Finding 52).

(f) If the adjusted costs of handling live stock by the fifty-six commission firms for the year 1925 be deducted from the commissions which would have been received applying to that business the rates prescribed by the Secretary's order of November 19, 1926, only twenty firms [fol. 141] out of said fifty-six firms would have had revenue in excess of their costs (Master's Finding 36).

(g) If the adjusted costs of handling live stock by the fifty-six commission firms for the year 1925, be deducted from the commissions which would have been received applying to that business the rates prescribed by the Secretary's order of November 19, 1926, excluding that portion of the rates applicable to dealers and speculators, and including in lieu thereof the commissions actually received on such business under the tariff in effect during the year 1925, only fifteen out of said fifty-six firms would have received revenue in excess of their costs (Master's Finding 36).

(h) If there be deducted from the average cost per car of handling live stock in the year 1925, by said fifty-six commission firms, the average commissions which would have been received on that business applying thereto the rates prescribed by the Secretary's order of November 19, 1926, said fifty-six firms would have had an average loss of $0.42 per car (Master's Finding 39).

(i) If there be deducted from the average cost per car of handling live stock by said fifty-six commission firms during the year 1925, the average commissions which would have been received applying to said business the rates prescribed by the Secretary in his order of November 19, 1926, excluding increase in dealers and speculators, and including in lieu thereof the actual commissions received on dealers' and speculators' sales under the tariff in effect 1925 said fifty-six commission firms would have had an average loss of $0.91 per car (Master's Finding 39).

It should be here born- in mind that the auditors for the plaintiffs in making their audits eliminated as to each of said commission firms the selling salaries for all "resident owners" as set up on the books of said firm, in figuring their cost of handling live stock, and applied in lieu thereof for "resident owners" the salary of $5,000.00 per year for each owner cattle salesman, $5,000.00 per year for each owner sheep salesman and $4,000.00 per year for each owner hog salesman, or stated differently, the audits for plaintiffs, in ascertaining the plaintiffs' cost of handling [fol. 142] live stock, applied the salaries for "resident owners" acting as salesmen in the same amounts as fixed by the Secretary in paragraph 18 of his conclusions upon which he based his order of November 19, 1926 (Master's Finding 35).

It should also be borne in mind that in reaching the aforesaid results the additional depreciation of $6,194.92 which was set up by the Gilchrist auditors in Exhibit 106 (and which is not shown in the Government audits), and also the additional invested capital set up by the Gilchrist auditors in Exhibit 107 for Exchange memberships of those commission firms which had not entered the value of their memberships on their books (and which additional invested capital is not reflected in the Government audits) have not been taken into account in ascertaining plaintiff's cost of handling live stock (Master's Findings 37 and 38).

The record also contains separate audits of the business of two of the plaintiffs, Tagg Brothers & Moorhead, and R. M. Laverty, for the year ending March 31, 1927, showing the actual commissions received by them under Tariff No. 2 (which was in effect during the whole period covered by the audits), the total expenses of the business, and not results, and also what would have been the net results of applying to their business during that period the Secretary's tariff of charges, with the exception that the advance permitted by that tariff was not figured on "seconds" the commission for selling "seconds" being figured on the rate fixed in Tariff No. 2.

The audit for Tagg Brothers & Moorhead (Exhibit 118) shows (Master's Finding 40):

[fol. 143] (1) The total commissions actually received by Tagg Brothers & Moorhead on their business during the year ended March 31, 1927, under Tariff No. 2 was $87,937.93

The total expense of the business (including salaries as actually set up on the firm's books) was 86,196.02

Net profit $ 1,741.91

(2) If the business had been conducted under the Secretary's tariff, with the exception of the "seconds" being kept on the rates in Tariff No. 2, the commissions which would have been received would have been $76,823.80

The total expense of the business during that period (including salaries as actually set up on the firm's books) would have been 86,196.02

Net loss $ 9,372.22

The audit of the business of R. M. Laverty, (Exhibit 119) shows (Master's Finding 41):

(1) The total commissions actually received by R. M. Laverty on his business during the year ended March 31, 1927, under Tariff No. 2 was $39,606.37

The total expense of the business (not including any salary for said plaintiff) was 32,981.82

Net profit $6,624.55

[fol. 144] (2) If the business had been conducted under the Secretary's tariff, with the exception of the "seconds" being kept on the rates in Tariff No. 2, the commissions which would have been received would have been $34,748.45

The total expense of the business (not including any salary for paid plaintiff) would have been $32,981.82

Net profit $1,766.63

As before stated, if the adjusted costs of handling live stock by the fifty-six commission firms for the year 1925, be deducted from the commissions which would have been received by them on that business applying thereto the rates fixed by the Secretary in his order of November 19, 1926, only twenty firms out of said fifty-six firms would have had revenue in excess of their costs; or, stated differently thirty-six of said firms would have had no revenue in excess of their costs. If the result be stated in percentage of the fifty-six firms, 64 per cent of said firms would not have had any income in excess of their costs.

And if the adjusted costs of handling live stock by said fifty-six firms for the year 1925, be deducted from the commissions which they would have received applying to that business the rates prescribed by the Secretary's order, excluding that portion of the order applicable to dealers and speculators, and including in lieu thereof the commissions actually received on such business under the tariff in effect during the year 1925, only fifteen out of said fifty-six firms would have had revenue in excess of their costs; or, stated differently, forty-one of said firms would not have had revenue in excess of their costs. If the result be again stated in percentage, 73 per cent of said fifty-six firms would not have had any income in excess of their costs.

And, in reaching the aforesaid results, salaries for resi- [fol. 145] dent owners have been treated exactly as the Secretary treated them in building his rate schedule, i. e., they have been figured at $5,000.00 per year for cattle salesmen, $5,000.00 per year for sheep salesmen, and $4,000.00 per year for hog salesmen. Furthermore, as has been heretofore in this finding stated, the additional depreciation shown by Exhibit 106 and additional invested capital shown in Exhibit 107, have not been taken into account.

And so far as volume of live stock business on the Omaha market is concerned, the year 1925 does not appear to have been an abnormal year as compared with the year 1926. While the total head of cattle, calves and sheep received in the year 1926 were in excess of the number of head of such stock for the year 1925, the total head of hogs in the year 1925 was 707,918 head in excess of the receipts of such stock for the year 1926; and the total head of all of said live stock was 241,459 head less in 1926 than in 1925

(Master's Finding 13). The volume of business for the first five months of 1927 was 4,716 carloads less than for the same period in 1926 (exclusive of horses and driven in and trucked in live stock) (Master's Finding 12).

Upon the whole record, and particularly in view of the demonstrated results of applying the rates prescribed by the Secretary in his order of November 19, 1926, to the business of the fifty-six commission firms (constituting practically all of the firms doing business on the Omaha Market) for the year 1925, it cannot be doubted that the Secretary's schedule of rates is confiscatory, and the Special Master so finds.

Conclusions of Law

Plaintiffs (constituting market agencies engaged in the buying and selling of live stock on commission at the Union Stockyards at Omaha, Nebraska), bring this suit to enjoin enforcement of an order of November 19, 1926, made by defendant, William M. Jardine, as Secretary of Agricul- [fol. 146] ture of the United States, acting under the Packers and Stockyards Act of Congress of August 15, 1921 (Chapter 64, 42 Statutes at Large, 159; U. S. C. 1925, Title 7, Chapter 9). This order prescribed a schedule of maximum commissions chargeable by such market agencies for the purchase and sale of live stock on said market. The grounds upon which the order is attacked have been heretofore set forth (Master's Report, pp. 2-4).

One of the contentions of counsel for plaintiffs is that if the Act can be construed as vesting in the Secretary of Agriculture the right to determine and prescribe rates chargeable by plaintiffs for services rendered by them to their customers, such portion of the Act is an unconstitutional interference with the freedom of contract guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States.

Is the above constitutional question foreclosed by the decision in the case of Stafford v. Wallace, 258 U. S. 495?

This Act of Congress was before the Supreme Court of the United States in the case reported as Stafford v. Wallace, 258 U. S. 495, 66 L. ed. 735, 42 Sup. Ct. Rep. 397, 23 A. L. R. 229. That case involved two actions, one brought

by the commission men in the stockyards of Chicago, Illinois, and the other by dealers in the same yards to enjoin orders by the Secretary of Agriculture putting the Act in force at the Chicago yards, but not involving any order by the Secretary prescribing rates to be charged by commission men for their services in said yards.

Counsel for defendants contend that as the Supreme Court in the Stafford case sustained the Act against efforts of the commission men to enjoin its enforcement although no specific attempt to fix their rates had as yet been made, the Court clearly considered regulation by the Secretary of the rates to be charged by commission men an appro- [fol. 147] priate measure for the regulation of interstate commerce, as indicated by excerpts quoted by counsel in their brief, pp. 26-29, from the opinion in the Stafford case and the later case of Chicago Board of Trade v. Olsen, 262 U. S. 1, and that the scope of the decision in the Stafford case has thus been clearly defined by the Court itself, and the immediate question in the case at bar has been cleared of doubt.

Counsel for plaintiffs contend, on the other hand, that the decision in the Stafford case must be confined to the single question whether Congress had jurisdiction under the Commerce Clause to make any regulation in the premises, for the reason that the question presented in that case was the power of Congress to make any regulation on the ground that the whole subject was not in the domain of interstate commerce, and therefore not within the jurisdiction of Congress.

In the Stafford case the Court in the opinion stated the question presented in the following language (66 L. ed. 741-2):

"The only question here is whether the business done in the stock yards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation,"

and later in the opinion said (66 L. ed. 747):

"Other objections are made to the Act and its provisions as violative of other limitations of the Constitution, but the only one seriously pressed was that based on the commerce

clause and we do not deem it necessary to discuss the others."

The Supreme Court in its decisions decides only the real controversy raised by the record: Stearns v. Wood, 236 [fol. 148] U. S. 75, 78; Little v. Bowers, 134 U. S. 547, 557; California v. San Pablo & T. R. Co., 149 U. S. 308, 314; Richardson v. McChesney, 218 U. S. 487, 492; Missouri, K. & T. R. Co., v. Cade, 233 U. S. 642, 648.

Inasmuch as no order of the Secretary of Agriculture prescribing the charges to be made by commission men was involved in the Stafford case, and in view of the statement heretofore quoted from the opinion that the only question there involved was whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation, and in view of the later statement that other objections had been made to the Act and its provisions as violative of other limitations of the Constitution, but that the only one seriously pressed was that based upon the commerce clause and the court did not deem it necessary to discuss the others, it is clear, we think, that the constitutional question presented in the case at bar is still open.

If the Act can be construed as vesting in the Secretary the right to determine and prescribe rates chargeable by plaintiffs for the services rendered by them to their customers, is such portion of the Act an unconstitutional interference with the freedom of contract guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States?

Counsel for plaintiffs contend that there is a vital distinction between regulation of property rights and use of property, on the one hand, and regulation of wages and pay for personal services on the other hand, in this, that property originates with the State and reverts to the State, and is held, as it were, at the will of the State; whereas liberty, which in the constitutional sense is not confined to restraint of the person but includes the right to work for [fol. 149] a living by the use of brain or muscle in any normal and accustomed vocation in life, is not held at the

will of the State; that the existence of liberty is a prerequisite to the very organization of a government of the people, such as ours, and its preservation is of the very essence of that personal freedom and opportunity which it is the purpose of government to secure; also that property in our theory of government, always has its equivalent—in money or other thing of value; whereas there is no equivalent which may be substituted for liberty—there is no medium of exchange; that property may be taken by the State by exchanging for it "just compensation"; but liberty may not be taken at all, whether paid for or not—except in time of war or as a punishment for crime.

Counsel for defendants contend: (1) that there is no real distinction, in the constitutional sense, so far as legislative price fixing is concerned, between property and the use of property, on the one hand, and personal services on the other hand; (2) that if there be any distinction between property and personal services, the "personal services" must be limited to those employees who (a) work for one master, (b) do not furnish the equipment or tools with which they work, (c) do not hire or pay subordinates, and (d) are controlled by their master in performing the services for which they are paid; and (3) that the services of the market agencies are not personal services such as to exempt them from rate regulation.

Absolute freedom of contract does not, of course, exist. Many statutes have been held to be valid limitations upon the right of contract. Other statutes have been held to be unconstitutional interferences with the right of contract. A review of the decisions will be helpful to indicate what legislative limitations upon the right to contract have been held valid, and what legislations upon such right have been determined to be invalid.

[fol. 150] The Supreme Court of the United States has held the following laws to be constitutional:

Illinois statute fixing the maximum charge to be made for the use of elevators and warehouses for the elevation and storage of grain, upon the ground that the property had been devoted to a public use and thereby an interest granted to the public in its use (Munn v. Illinois, 94 U. S. 113, 24 Law ed. 77): Act of Congress forbidding attorneys

to receive more than a sum fixed for prosecuting a claim against the United States for a pension, upon the ground that Congress had the right to attach conditions to the grant of a gift or bounty (Frisbie v. United States, 157 U. S. 160); Utah statute restricting hours of labor in mines and smelters, upon the ground that such employments too long pursued were injurious to the health of the employees (Holden v. Hardy, 169 U. S. 366, 42 Law ed. 780, 18 Sup. Ct. Rep. 383); Tennessee statute requiring redemption in cash of store orders issued in payment of wages, upon the ground that it was a proper regulation to entitle the employee to demand and receive his wages in money rather than in something less valuable (Knoxville Iron Co. v. Harbison, 183 U. S. 13, 46 Law ed. 55, 22 Sup. Ct. Rep. 1); Act forbidding payment of wages to seamen in advance upon the ground of necessity to protect them against threatened wrongs tending to restrict them of their liberty(Patterson v. Bark Eudora, 190 U. S. 169, 47 Law ed. 1002, 23 Sup. Ct. Rep. 821); Oregon statute forbidding the employment of any female in any mechanical establishment, factory or laundry more than ten hours during any one day upon the ground that the statute was a proper regulation for the public health (Muller v. Oregon, 208 U. S. 412, 52 Law ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957); Arkansas statute requiring a miner's wages to be based upon weight of coal before screen, upon the ground that it was a regulation tending to prevent unfair and perhaps fraudulent methods in the payment of wages (McLean v. Arkansas, 211 U. S. 539, 53 Law ed. 315, 29 Sup. Ct. Rep. [fol. 151] 206); Massachusetts statute limiting hours of labor of female workers upon the ground that it was a proper regulation for the public health (Riley v. Massachusetts, 232 U. S. 671, 58 Law ed. 788, 34 Sup. Ct. Rep. 469); Kansas statute providing for the regulation and control of rates of premium for fire insurance on the ground that the business was affected with a public interest (German Alliance Insurance Company v. Kansas, 233 U. S. 389, 58 Law ed. 1011, 34 Sup. Ct. Rep. 612, L. R. A. 1915C 1189); New York statute regulating the time and manner of payment of wages to employees in certain specified industries upon the ground of a necessary regulation to provide ready purchasing power for their needs over the use of credit (Erie R. R. Co. v. Williams, 233 U. S. 685, 58

Law ed. 1155, 34 Sup. Ct. Rep. 761, 51 L. R. A. (N. S.) 1097); California statute forbidding employment of women in certain specified establishments for more than eight hours in one day or forty-eight hours in one week upon the ground of a proper regulation for the public health (Miller v. Wilson, 236 U. S. 373, 59 Law ed. 628, 35 Sup. Ct. Rep. 342, L. R. A. 1915F 829; see also Bosley v. McLaughlin, 236 U. S. 385, 59 Law ed. 632, 35 Sup. Ct. Rep. 345); Oregon statute forbidding employment of any person in any mill, factory or manufacturing establishment more than ten hours in any one day, with certain exceptions, and providing payment for overtime of not to exceed three hours in any one day at the rate of time and a half of regular wages, upon the ground that it was a valid health regulation (Bunting v. Oregon, 243 U. S. 426, 61 Law ed. 830, 37 Sup. Ct. Rep. 435, Ann. Cas. 1918A 1043); New York statute prohibiting employment of women in restaurants between hours of ten p. m. and six a. m., upon the ground that it was a proper regulation for the health and welfare of such women (Radice v. New York, 264 U. S. 292, 68 Law ed. 690, 44 Sup. Ct. Rep. 325); Act of Congress (Adamson Law) prescribing an eight-hour working day for employees of interstate carriers by railroads who were engaged in the operation of trains, and [fol. 152] fixing a scale of minimum wages therefor with proportionate increases for overtime, enforceable only for a limited period (Wilson v. New, 243 U. S. 332, 61 Law ed. 755, 37 Sup. Ct. Rep. 298, L. R. A. 1917E 938, Ann. Cas. 1918A 1024); temporary rent laws to tide over an emergency (Block v. Hirsh, 256 U. S. 135, 65 Law ed. 865, 41 Sup. Ct. Rep. 458, 16 A. L. R. 165; Marcus Brown Holding Co. v. Feldman, 256 U. S. 170, 65 Law ed. 877, 41 Sup. Ct. Rep. 465).

The Supreme Court of the United States has held the following laws to be unconstitutional:

Louisiana statute prohibiting a citizen from contracting outside the state for insurance on his property in the state on the ground that it violated the liberty guaranteed to him by the Fourteenth Amendment (Allgeyer v. Louisiana, 165 U. S. 578, 41 Law ed. 832, 17 Sup. Ct. Rep. 427); Act of Congress making it a criminal offense for any carrier en-

gaged in interstate commerce to discharge an employee on the ground that he is a member of a labor union (Adair v. United States, 208 U. S. 161, 52 Law ed. 436, 28 Sup. Ct. Rep. 277, 13 Ann. Cas. 764); Texas statute prohibiting anyone from acting as a conductor on a railroad train without having had two years' experience as a brakeman or conductor on a freight train (Smith v. Texas, 233 U. S. 630; Kansas statute making it a misdemeanor for any employer to require as a condition of securing employment or as a condition of continuing in the employment any employee not to become or remain a member of a labor union (Coppage v. Kansas, 236 U. S. 1, 59 Law ed. 446, 35 Sup. Ct. Rep. 240, L. R. A. 1915C 960); Arizona statute prohibiting an employer of more than five workers at any one time in that state employing less than eighty per cent qualified electors or native born citizens of the United States or some subdivision thereof (Truax v. Raich, 239 U. S. 33, 60 Law ed. 131, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B 283, L. R. A. 1916D 545); Washington statute forbidding employment agents from receiving fees from the workers for whom they find places (Adams v. Tanner, [fol. 153] 244 U. S. 590, 61 Law ed. 1336, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D 973, L. R. A. 1917F 1163); Act of Congress providing for the fixing of a minimum wage for minors and women in the District of Columbia upon the ground of an unconstitutional restriction upon the liberty of contract of adult women (Adkins v. Children's Hospital, 261 U. S. 525, 67 Law ed. 785, 43 Sup. Ct. Rep. 394, 24 A. L. R. 1239); Kansas statute creating an "Industrial Court" for the purpose of providing compulsory arbitration between employers and employees in businesses declared to be affected with a public interest (Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 67 Law ed. 1103, 43 Sup. Ct. Rep. 630, 27 A. L. R. 1280); New York Statute making it unlawful for any ticket broker to resell any ticket or other evidence of right of entry to any theater, place of amusement or entertainment, or other place where public exhibitions, games, contests or performances are given, at a price in excess of fifty cents in advance of the price printed on the face of such ticket or other evidence of right of entry (Tyson Bro. v. Banton, 71 Law ed. 718); an Act of New Jersey empowering the Commissioner of Labor to fix and limit charges to be made by applicants

for license for an employment agency (Ribnik v. McBride, 72 Law ed. (U. S.) —, decided May 14, 1928).

In many of the cases heretofore cited, the question for determination was whether the legislation was a valid exercise of the police power of the state, in view of the Fourteenth Amendment.

The Act of Congress fixing a minimum wage for minors and women in the District of Columbia (Adkins v. Children's Hospital, 261 U. S. 525) was an exercise of the power of Congress to legislate for a territory, and the question there presented was whether the Act violated the Fifth Amendment to the Constitution.

[fol. 154] The Act of Congress involved in the case at bar is of course referable to the commerce clause of the Constitution, and, if sustainable at all, is sustainable only under said clause.

The power of Congress under the commerce clause may not be exerted in violation of any fundamental right secured by other provisions of the Constitution. In Adair v. United States, 208 U. S. 161, 180, it is said:

"We need scarcely repeat what this Court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution."

In Monongahela Navigation Co. v. United States, 148 U. S. 312, 336, it is said:

"But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the Fifth Amendment."

The Supreme Court of the United States has many times passed upon the question of whether a legislative enactment was an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth or Fourteenth Amendment to the Constitution of the United States.

In Frisbie v. United States, 157 U. S. 160 (in which an Act of Congress fixing attorneys' fees for prosecuting

claims against the United States for pension was sustained on the ground that Congress had the right to attach conditions to a gift or bounty) the Court, after referring to regulations interfering with liberty of contract which had been held valid, said (p. 166):

"The possession of this power by government in no manner conflicts with the proposition that, generally speaking, [fol. 155] every citizen has a right freely to contract for the price of his labor, services, or property."

In Allgeyer v. Louisiana, 165 U. S. 578 (wherein the Louisiana statute prohibiting a citizen from contracting outside the state for insurance on his property in the state, was held unconstitutional as violative of the liberty guaranteed by the Fourteenth Amendment) the Court said (p. 589):

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In Patterson v. Bark Eudora, 190 U. S. 169 (in which the Act of Congress forbidding payment of wages to seamen in advance was sustained as necessary to protect them against threatened wrongs tending to restrict them of their liberty) that the Court still adhered to the view which had been expressed in the Frisbie case regarding interference with liberty of contract is manifest from the following quoted from that case (p. 174):

"The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right to freely contract for the price of his labor, services, or property."

In Adair v. United States, 208 U. S. 161 (in which the Act of Congress making it a criminal offense for any carrier engaged in interstate commerce to discharge an employee on the ground that he is a member of a labor union was held to be repugnant to the Fifth Amendment as an [fol. 156] invasion of the personal liberty as well as the right of property guaranteed by that amendment), the Court said (pp. 174-5):

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

In Muller v. Oregon, 208 U. S. 412 (wherein the Oregon statute limiting the hours of female labor was sustained as a proper regulation for the public health) the Court said (p. 421):

"It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment to the Federal Constitution."

In McLean v. Arkansas, 211 U. S. 539 (wherein the Court held constitutional the Arkansas statute requiring a miner's wages to be based upon the weight of coal before

screening as tending to prevent unfair and perhaps fraudulent methods in the payment of wages) the Court said (p. 545):

[fol. 157] "That the Constitution of the United States in the Fourteenth Amendment thereof, protects the right to make contracts for the sale of labor, and the right to carry on trade or business against hostile state legislation, has been affirmed in the decisions of this court, and we have no disposition to question those cases in which the right has been upheld and maintained against such legislation, Allgeyer v. Louisiana, 165 U. S. 578; Adair v. United States, 208 U. S. 161."

In Smith v. Texas, 233 U. S. 630 (in which the Texas statute prohibiting anyone from acting as a conductor on a railroad train without having had two years' experience as a brakeman or conductor on a freight train was held unconstitutional) the Court said (p 636):

"In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

In Coppage v. Kansas, 236 U. S. 1 (wherein the Court held unconstitutional the Kansas statute making it a misdemeanor for any employer to require as a condition of securing or continuing in the employment, any employee not to become or remain a member of a labor union) the Court said (p. 14):

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional

sense. The right is as essential to the laborer as to the [fol. 158] capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

In Truax v. Raich, 239 U. S. 33 (wherein the Court held unconstitutional the Arizona statute regulating employment of aliens, the Court said (p. 41):

"It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure."

The Massachusetts statute limiting hours of labor for female workers (Riley v. Massachusetts, 232 U. S. 671), and quite similar statutes of California (Miller v. Wilson, 236 U. S. 373, and Bosley v. McLaughlin, 236 U. S. 385), were held valid as proper regulations for the public health upon the authority of Muller v. Oregon, supra.

In Bunting v. Oregon, 243 U. S. 426 (involving the Oregon statute limiting hours of employment in any mill, factory or manufacturing establishment, and providing payment for overtime not exceeding three hours in any one day at the rate of time and a half of regular wages) while the Court held the statute constitutional as a valid health regulation, it declined to consider or decide whether the law could be upheld as a regulation of wages.

In Adkins v. Children's Hospital, 261 U. S. 525 (wherein the Court held unconstitutional the Act of Congress providing for the fixing of a minimum wage for minors and [fol. 159] women in the District of Columbia, so far as it applied to adult women) the Court said (67 Law ed. 791):

"The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the 5th Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause is settled by the decisions of this court, and is no longer open to question. Allgeyer v. Louisiana, 165 U. S. 578, 591, 41 L. ed. 832, 836, 17 Sup. Ct. Rep. 427; New York L. Ins. Co. v. Dodge, 246 U. S. 357, 373, 374, 62 L. ed. 772, 781, 782, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918C 593; Coppage v. Kansas, 236 U. S. 1, 10, 14, 59 L. ed. 441, 444, 446, L. R. A. 1915C 960, 35 Sup. Ct. Rep. 40; Adair v. United States, 208 U. S. 161, 52 L. ed. 436, 28 Sup. Ct. Rep. 277, 13 Ann. Cas. 764, Loehner v. New York, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133; Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 28 L. ed. 585, 4 Sup. Ct. Rep. 652; Muller v. Oregon, 208 U. S. 412, 421, 62 L. ed. 551, 555, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957. Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining."

In the last cited case the Court reviewed some of the decisions in which interferences with liberty of contract had been upheld and subdivided such cases into four classes: "(1) Those dealing with statutes fixing rates and charges to be exacted by businesses impressed with a public interest; (2) Statutes relating to contracts for the performance of public work; (3) Statutes prescribing the character, method, and time for payment of wages; (4) Statutes fixing hours of labor."

In the last cited case referring to those cases falling within subdivision (3) the Court said (p. 792):

[fol. 160] "In none of the statutes thus sustained was the liberty of the employer or employee to fix the amount of wages the one was willing to pay and the other willing to receive interfered with. Their tendency and purpose was

to prevent unfair and perhaps fraudulent methods in the payment of wages, and in no sense can they be said to be, or to furnish a precedent for, wage-fixing statutes."

And in the last cited case the Court, speaking of the decisions falling within subdivision (4), said (p. 795):

"Enough has been said to show that the authority to fix hours of labor cannot be exercised except in respect of those occupations where work of long-continued duration is detrimental to health. This court has been careful in every case where the question has been raised, to place its decision upon this limited authority of the legislature to regulate hours of labor, and to disclaim any purpose to uphold the legislation as fixing wages, thus recognizing an essential difference between the two. It seems plain that these decisions afford no real support for any form of law establishing minimum wages."

And in the last cited case the Court further said (pp. 797-8):

"Finally, it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage. The power to fix high wages connotes, by like course of reasoning, the power to fix low wages. If, in the face of the guaranties of the 5th Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. If, for example, in the opinion of future lawmakers, wages in the building trades shall become so high as to preclude people of ordinary means from building and owning homes, an authority which sustains the minimum wage will be invoked to support a maximum wage for building laborers and artisans, and the same [fol. 161] argument which has been here urged to strip the employer of his constitutional liberty of contract in one direction will be utilized to strip the employee of his constitutional liberty of contract in the opposite direction. A wrong decision does not end with itself; it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other."

In Radice v. New York, 264 U. S. 292 (wherein the Court held constitutional the New York statute prohibiting employment of women in restaurants between the hours of ten p. m. and six a. m., as a regulation for the health and welfare of such women) the Court made clear the distinction between that case and Adkins v. Children's Hospital, supra, saying (68 L. ed. 694):

"that case presented a question entirely different from that now being considered. The statute in the Adkins case was a wage fixing law, pure and simple."

In Tyson & Bro. v. Banton, 71 Law ed. (U. S. Sup. Ct.) 718 (wherein the court held unconstitutional the New York statute making it unlawful for any ticket broker to resell any tickets or other evidence of right of entry to any theater, place of amusement or entertainment, or other place where public exhibitions, games, contests or performances are given, at a price in excess of fifty cents in advance of the price printed on the face of such ticket or other evidence of right of entry) the Court said (p. 722):

"The power to regulate property, services or business can be invoked only under special circumstances; and it does not follow that because the power may exist to regulate in some particulars it exists to regulate in others, or in all."

And again (p. 727-8):

"If it be within the legitimate authority of government to fix minimum charges for admission to theatres, lectures (where perhaps the lecturer alone is concerned), baseball, football and other games of all degrees of interest, cir- [fol. 162] cuses, shows (big and little), and every possible form of amusement, including the lowly merry-go-round with its adjunct, the hurdy-gurdy, (Com. v. Bow, 177 Mass. 347, 58 N. E. 1017), it is hard to see where the limit of power in respect of price fixing is to be drawn.

"It is urged that the statutory provision under review may be held as an appropriate method of preventing fraud, extortion, collusive arrangements between the management and those engaged in reselling tickets, and the like. That such evils exist in some degree, in connection with the

theatrical business and its ally, the ticket broker, is undoubtedly true, as it unfortunately is true in respect of the same or similar evils in other kinds of business. But evils are to be suppressed or prevented by legislation which comports with the Constitution, and not by such as strikes down those essential rights of private property protected by that instrument against undue governmental interference."

In Ribnik v. McBride, 72 Law ed. (U. S. Sup. Ct.) —, which is the latest expression of the Court upon the question (wherein th Court held unconstitutional the Act of New Jersey empowering the Commissioner of Labor to fix and limit charges to be made by applicants for license for an employment agency) the Court said:

"In Adkins v. Children's Hospital, 261 U. S. 525, 67 L. ed. 785, 24 A. L. R. 1238, 43 Sup. Ct. 394, this Court had under consideration an act of Congress fixing minimum wages for women and children in the District of Columbia. The Legislation, so far as it affected women, was held invalid as contravening the due process of law clause of the 14th Amendment, because it was an arbitrary interference with the right to contract in respect of terms of private employment. It was said (p. 546) that while there was no such thing as absolute freedom of contract, nevertheless, such freedom of contract was the general rule, and restraint the exception; and that the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances.

[fol. 163] "The business of securing employment for those seeking work and employees for those seeking workers is essentially that of a broker, that is, of an intermediary. While we do not undertake to say that there may not be a deeper concern on the part of the public in the business of an employment agency, that business does not differ in substantial character from the ousiness of a real estate broker, ship broker, merchandise broker or ticket broker. In the Tyson & Bro.-United Theater Ticket Offices Case, supra, we declared unconstitutional an act of the New York legislature which sought to fix the price at which theater tickets should be sold by a ticket broker, and it is not easy to see how, without disregarding that decision,

price-fixing legislation in respect of other brokers of like character can be upheld."

Counsel for defendants, in support of their contention that there is no real distinction in the constitutional sense, so far as legislative price fixing is concerned, between property, and the use of property on the one hand, and personal services on the other hand, rely upon Munn v. Illinois, 94 U. S. 113, 24 Law ed. 77; German Alliance Co. v. Kansas, 233 U. S. 389, 58 Law ed. 1011; 34 Sup. Ct. Rep. 612, L. R. A. 1915C 1189; Budd v. New York, 143 U. S. 517; Brass v. Stoeser, 153 U. S. 391; Wolff Packing Co. v. Industrial Court of Kansas, 262 U. S. 67 Law ed. 1103, 43 Sup. Ct. Rep. 630, 27 A. L. R. 1280; Terminal Taxicab Co. v. District of Columbia, 241 U. S. 252; and Sinking Fund Cases, 99 U. S. 700.

In Munn v. Illinois, supra, the Court held valid an Illinois statute fixing the maximum charge to be made for the use of elevators and warehouses for the elevation and storage of grain, upon the ground that the property had been devoted to a public use, and thereby an interest granted to the public in its use.

In German Alliance Insurance Co. v. Kansas, supra, the Court held that the business of fire insurance is so far affected with a public interest as to justify legislative regulation of its rates. The Court in that case, referring to Munn v. Illinois, supra, said (233 U. S. 408):

[fol. 164] "The principle was expressed as to property, and the instance of its application was to property, but it is manifestly broader than that instance. It is the business that is the fundamental thing; property is but its instrument, the means of rendering the service which has become of public interest."

In Brass v. Stoeser, supra, the North Dakota statute making all buildings, elevators, and warehouses used for the handling of grain for a profit public warehouses, and fixing a storage rate, was sustained.

In Budd v. New York, 143 U. S. 517, a New York statute fixing a maximum charge for elevating, receiving, weighing and discharging grain, was sustained.

Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, involved a Kansas statute declaring the following to be affected with a public interest: (1) Manufacture and preparation of food for human consumption; (2) manufacture of clothing for human wear; (3) production of any substance in common use for fuel; (4) transportation of the foregoing; (5) public utilities and common carriers. This statute vested an industrial court of three judges with power, upon its own initiative or on complaint, to summon the parties and hear any dispute over wages or other terms of employment in any such industry, and if the court should find the peace and health of the public imperiled by such controversy, it was required to make a finding and fix the wages and other terms for future conduct of the industry. Either party after sixty days could ask for a readjustment, in which event the order was to continue in effect for such reasonable time as the Court should fix, or until changed by agreement of the parties, and a right of review of such order was given to the Supreme Court of the state.

In this case the Court held that:

"The attempt by a state to create continuity of such business as food and clothing production and mining, by [fol. 165] requiring employers to pay wages fixed by an industrial court, and forbidding the employees to strike, violates the provision of the 14th Amendment to the Federal Constitution forbidding deprivation of liberty and property without due process of law."

In the opinion in the last cited case the Court said (27 A. L. R. 1289):

"The employer is bound by this act to pay the wages fixed; and while the worker is not required to work at the wages fixed, he is forbidden, on penalty of fine or imprisonment, to strike against them, and thus is compelled to give up that means of putting himself on an equality with his employer which action in concert with his fellows gives him.

"There is no authority of this Court to sustain such exercise of power in respect to those kinds of business affected with a public interest."

But the Court did not decide whether the preparation of food should be put in the class of quasi public business as

one "clothed with a public interest," saying in the opinion (27 A. L. R. 1288):

"We are relieved from considering and deciding definitely whether preparation of food should be put in the third class of quasi public businesses, noted above, because, even so, the valid regulation to which it might be subjected as such could not include what this act attempts."

In Terminal Taxicab Co. v. District of Columbia, supra, the Court held that a taxicab company was a common carrier in so far as its business of soliciting and carrying passengers under exclusive contract with certain hotels and a terminal railway company was concerned, and subject to regulation by the public utilities commission of the District of Columbia under an act of Congress, but that that part of its business consisting in furnishing automobiles from its central garage on individual orders could not be regarded as [fol. 166] a public utility, and the rates therefor were, therefore, not open to inquiry by the commission.

In Adkins v. Children's Hospital, 67 Law ed. 792, the Court, referring to Munn v. Illinois, said:

"The power here rests upon the ground that where property is devoted to a public use, the owner thereby, in effect, grants to the public an interest in the use which may be controlled by the public for the common good to the extent of the interest thus created."

In Wolff Packing Co. v. Court of Industrial Relations, 27 A. L. R. 1289, the Court quotes from Munn v. Illinois as follows:

"Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control."

and then adds the following:

"These words refute the view that public regulation in such cases can secure continuity of a business against the owner. The theory is that of revocable grant only."

In the case of Tyson & Bro. v. Banton, supra, the Court quotes from Munn v. Illinois the following (71 Law ed. 724):

"When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

[fol. 167] and the Court then adds:

"The significant requirement is that the property shall be devoted to a use in which the public has an interest, which simply means, as in terms it is expressed at page 130, that it shall be devoted to a 'public use.' "

And in Tyson & Bro. v. Banton, the Court says (p. 724):

"German Alliance Co. v. Lewis (Kansas), 233 U. S. 389, 58 L. ed. 1011, L. R. A. 1915C 1189, 34 Sup. Ct. Rep. 612, carries the doctrine further and marks the extreme limit to which this court thus far has gone in sustaining price fixing legislation. There the court said that a business might be affected with a public interest so as to permit price regulation although no public trust was impressed upon the property and although the public might not have a legal right to demand and receive service; and it was held that fire insurance was such a business."

Counsel for defendants also rely to some extent upon Wilson v. New, 243 U. S. 332; 61 Law ed. 755; 37 Sup. Ct. Rep. 298; L. R. A. 1917E 938; Ann. Cas. 1918A 1024, involving the act of Congress commonly known as the Adamson Law, and also the cases of Block v. Hirsh, 256 U. S. 135; 65 Law ed. 865; 41 Sup. Ct. Rep. 458; 16 A. L. R. 165, and Marcus Brown Holding Co. v. Feldman, 256 U. S. 170; 65 Law ed. 877; 41 Sup. Ct. Rep. 465 (being cases involving legislative fixing temporarily of rents), although counsel do not cite the last two cases.

In Wilson v. New (wherein was involved the constitutionality of the act of Congress known as the Adamson Law prescribing an eight-hour working day for employees of interstate carriers by railroad who were engaged in the operation of trains and fixing a scale of minimum wages therefor with proportionate increases for overtime, enforceable only for a limited period) the Court said (243 U. S. 347):

[fol. 168] "What was the extent of the power, therefore, of Congress to regulate considering the scope of regulation which government had the right to exert with reference to interstate commerce carriers when it came to exercise its legislative authority to regulate commerce? is the matter to be decided. That the business of common carriers by rail is in a sense a public business because of the interest of society in the continued operation and rightful conduct of such business and that public interest begets a public right of regulation to the full extent necessary to secure and protect it, is settled by so many decisions, state and federal, and is illustrated by such a continuous exertion of state and federal legislative power as to leave no room for question on the subject. It is also equally true that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is primarily private, the establishment and giving effect to such agreed-on standard is not subject to be controlled or prevented by public authority."

In Ft. Smith & Western R. Co. v. Mills, 253 U. S. 206, which also involved the Adamson Law) the Court refused to apply the law in the case of an insolvent railroad which had agreed with its men to accept less wages than the Act prescribed, when stoppage of the public business was not threatened.

In Tyson & Bro. v. Banton, 71 Law ed. 418, 725, the Court said that the case of Wilson v. New and the rent cases before cited were relied upon to sustain the statute under review in Tyson & Bro. v. Banton, and added:

"But in these cases the statutes involved were of a temporary character, to tide over grave emergencies. Adkins v. Children's Hospital, 261 U. S. 525, 551, 552, 67 Law ed. 785, 793, 794, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394, the

emergency in the New Case being of nation-wide extent; and it is clear that, in the opinion of this court, at least the business of renting houses and apartments is not so affected [fol. 169] with a public interest as to justify legislative fixing of prices unless some great emergency exists. Block v. Hirsh, supra, p. 157 (65 L. ed. 871, 16 A. L. R. 165, 41 Sup. Ct. Rep. 458); Chastleton Corp. v. Sinclair, 264 U. S. 543, 548, 68 L. ed. 841, 843, 44 Sup. Ct. Rep. 405. And even with the emergency, the statutes 'went to the verge of the law.' Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 416, 67 L. ed. 322, 326, 28 A. L. R. 1321, 43 Sup. Ct. Rep. 158."

In Wolff Packing Co. v. Court of Industrial Relations, (262 U. S. 544) the Court said of the decision in Wilson v. New:

"It is not too much to say that the ruling in Wilson v. New went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of a great disaster."

And in the latest decision of the Supreme Court of the United States dealing with this question, Ribnik v. McBride, 72 Law ed. (U. S.) ——, (wherein the Court held unconstitutional the New Jersey statute empowering the Commissioner of Labor of that state to fix and limit the charges to be made by applicants for a license to conduct employment agencies) the Court said:

"Under the decisions of this Court it is no longer fairly open to question that, at least in the absence of a grave emergency, Tyson & Bros.—United Theater Ticket Offices v. Banton, (71 L. ed. 723, 725—A. L. R.—47, Sup. Ct. Rep. 426) supra, pp. 431, 437, the fixing of prices for food or clothing, of house rental or of wages to be paid, whether minimum or maximum, is beyond the legislative power."

It is clear, we think, from the foregoing review of the decisions of the Supreme Court of the United States, that the power of legislative price-fixing of rates rests upon the ground that property has been devoted to a public use and thereby an interest granted to the public in the use. Such is the doctrine of Munn v. Illinois. That it is the doctrine [fol. 170] of German Alliance Insurance Co. v. Kansas is

manifest from the language heretofore quoted from the opinion in that case, wherein it is said that the property is but the instrument, the means of rendering the service which has become of public interest. That such is the doctrine is emphasized by the statement of the Court in Tyson & Bro. v. Banton, that: "The significant requirement is that the property shall be devoted to a use in which the public has an interest." And that this doctrine does not extend to legislative fixing of wages is clear from the last declaration of the Court in Ribnik v. McBride, heretofore quoted, wherein it is said that under the decisions of the Court it is no longer fairly open to question that, at least in the absence of a grave emergency, the fixing of prices for food or clothing, or house rental or of wages to be paid, whether minimum or maximum, is beyond the legislative power. In these cases the Court was dealing with state legislative enactments.

As has been heretofore stated, the Act of Congress involved in the case at bar is referable to the commerce clause of the Constitution. If power is conferred by this Act of Congress to fix the commissions chargeable by commission men, constituting market agencies on the public live stock markets of the country for their personal services, it must be because the exercise of such power is conferred by the commerce clause of the Constitution.

That no such power is conferred by the commerce clause is clear from the decision in Wilson v. New and the later cases of Adkins v. Children's Hospital, Wolff Packing Co. v. Court of Industrial Relations, and Tyson & Bro. v. Banton. In Wilson v. New the employees who- wages were fixed by the Adamson Law were admittedly engaged in a business affected with a public interest, that is, they were performing personal services for interstate railroad carriers, and yet the Court sustained the Act, so far as the fixing of the wages of the employees was concerned, only because the wages were fixed temporarily to meet a sudden and great [fol. 171] emergency. In Adkins v. Children's Hospital, (24 A. L. R. 1249) the Court said:

"Moreover, in sustaining the wage feature of the law, emphasis was put upon the fact (p. 345) that it was in this respect temporary, 'leaving the employers and employees free as to the subject of wages to govern their relations by

their own agreements after the specified time.' The act was not only temporary in this respect, but it was passed to meet a sudden and great emergency."

In Wolff Packing Co. v. Court of Industrial Relations, the Court said of the decision in Wilson v. New, (27 A. L. R. 1289):

"It was there held that in a nation-wide dispute over wages between railroad companies and their train operatives, with a general strike, commercial paralysis, and grave loss and suffering overhanging the country, Congress had power to prescribe wages not confiscatory, but obligatory on both for a reasonable time to enable them to agree."

In Tyson & Bro. v. Banton, the Court, speaking of the decision in the case of Wilson v. New, and the rent cases heretofore cited, said:

"But in these cases the statutes involved were of a temporary character, to tide over grave emergencies, Adkins v. Children's Hospital, 261 U. S. 525, 551, 552, 67 L. ed. 785, 793, 794, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394, the emergency in the New Case being of nation-wide extent; and it is clear that, in the opinion of this court, at least the business of renting houses and apartments is not so affected with a public interest as to justify legislative fixing of prices unless some great emergency exists."

The contention of counsel for defendants that if there be any distinction between property and personal services, in so far as legislative price fixing is concerned, the personal services must be limited to employees as defined by counsel, is not tenable.

[fol. 172] The Supreme Courtof the United States in applying the guaranties of the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, has made no distinction between employees as they have been defined by counsel, and others who labor. In Traux v. Raich, supra, the Court speaks of "the right to work for a living in the common occupations of the community." In Smith v. Texas, supra, the Court says "the Constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind

and body in any lawful calling." And in Coppage v. Kansas, supra, the Court speaks of contracts of personal employment "by which labor and other services are exchanged for money or other forms of property."

And the cases of Frisbie v. United States, supra, (dealing with fees of attorneys in pension claims), Adam v. Tanner, supra, (dealing with the charges of employment agencies), Tyson & Bro. v. Banton, (dealing with the commissions of ticket brokers), and Ribnik v. McBride, (also dealing with the charges of employment agents), all involved rights of those not occupying the position of employees in the sense defined by counsel for defendants.

That the Act of Congress involved in the case at bar (assuming it vests the Secretary of Agriculture with authority to fix the maximum charges of plaintiff market agencies) is one which permits and of necessity requires the fixing of compensation for persons rendering personal services, is clear (Master's Finding 58).

If abuses have grown up in connection with a business they may not be suppressed or prevented by unconstitutional means. Adams v. Tanner, 244 U. S. 590; Bailey v. Drexel Furniture Co., 259 U. S. 20, 66 Law ed. 817; Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 67 Law ed. 322, 43 Sup. Ct. Rep. 158, 28 A. L. R. 1321; Tyson & Bro. v. Banton, 71 Law ed. 718.

[fol. 173] In Bailey v. Drexel Furniture Co., 66 Law ed. 819, it is said:

"The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the arc of our covenant, or in the harm which will come from breaking down revognized standards."

In Pennsylvania Coal Co. v. Mahon, 67 Law ed. 326, it is said:

"We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

In Adams v. Tanner, 244 U. S. 590, 61 Law ed. 1343, the Court said:

"Because abuses may, and probably do, grow up in connection with this business, (employment agencies), is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in and upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skilfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution can not be freely submerged, if and whenever some ostensible justification is advanced and the police power invoked."

In Tyson & Bro. v. Banton, 71 Law ed. 729, the Court said:

"But the difficulty or even the impossibility of thus dealing with the evils, if that should be conceded. constitutes [fol. 174] no warrant for suppressing them by methods precluded by the Constitution. Such subversions are not only illegitimate but are fraught with the danger that, having begun on the ground of necessity, they will continue on the score of expediency, and, finally, as a mere matter of course. Constitutional principles, applied as they are written, it must be assumed, operate justly and wisely as a general thing, and they may not be remolded by lawmakers or judges to save exceptional cases of inconvenience, hardship or injustice."

And the Supreme Court of the United States in Adkins v. Children's Hospital, 24 A. L. R. 1254, speaking of the harm which may result from a wrong decision, said:

"If, in the face of the guaranties of the 5th Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. If, for example, in the opinion of future lawmakers, wages in the building trades

shall become so high as to preclude people of ordinary means from building and owning homes, an authority which sustains the mimimum wage will be invoked to support a maximum wage for building laborers and artisans, and the same argument which has been here urged to strip the employer of his constitutional liberty of contract in one direction will be utilized to strip the employee of his constitutional liberty of contract in the opposite direction. A wrong decision does not end with itself; it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other."

The language which has been heretofore quoted from the decisions of the Supreme Court of the United States regarding the guaranties of the Fifth and Fourteenth Amendments to the Constitution of the United States against legislative invasions of the rights of personal liberty (which the Court has said include the right freely to contract for the price of one's labor, services or property), is clear, explicit and unequivocal. A careful consideration of those [fol. 175] cases and of the other decisions hereinbefore reviewed convinces the Special Master that if the Act of Congress involved in the case at bar can be construed as vesting in the Secretary of Agriculture the right to determine and prescribe rates chargeable by plaintiffs for the services rendered by them to their customers, so much of said Act as seeks to confer such power is unconstitutional as violative of plaintiffs' freedom of contract guaranteed by the Fifth Amendment to the Constitution, and the Special Master so rules.

The Special Master has carefully considered the cases cited in defendants' brief, other than those in his Conclusions specifically dealt with, but has found nothing in such authorities upholding the contentions of counsel for defendants concerning the constitutionality of the Act.

The Special Master has found that the rates prescribed by the Secretary in his order of November 19, 1926, are confiscatory (Master's Finding 59). The facts leading the Special Master to such conclusion are set forth at length in said finding, and need not be here restated.

The Special Master has also found that the Secretary in arriving at his so-called "reasonable cost of selling" live

stock in the year 1925, disallowed items of expense actually incurred by plaintiffs (Master's Finding 48) which disallowance was not justified by the evidence (Master's Finding 57). The Secretary was not justified in substituting his judgment as to the expenditures to be made for business getting for that of the managers of the commission firms. Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commisson, 262 U. S. 276, 67 Law ed. 981; State Public Utilities Commission ex rel. Springfield v. Springfield Gas and Electric Co., 291 Ill. 209, 125 N. E. 891; Interstate Commerce Commission v. Chicago Great Western Railway Co., 209 U. S. 108; Chicago, Milwaukee & St. Paul Railroad Co., v. Wisconsin, 238 U. S. 491; People ex rel. Delaware & H. Co. v. Stevens, 197 N. Y. 1; Ellerman v. Chicago Junction Railways and Union Stockyards Co., et. [fol. 176] al., 49 N. J. Eq. 217, 23 Atl. 287; Consolidated Gas Co., v. Newton, 267 Fed. 231; New York and Richmond Gas Co. v. Prendergast, et al., 10 Fed. (2nd) 167; Columbus Gaslight Co. v. Public Service Commission, 140 N. E. 538.

The Secretary's cost schedule of "reasonable cost of selling" does not include an item for supervision (Master's Finding 53), nor an item for bad debts (Master's Finding 54), nor did the Secretary take into account any going concern value, although the Special Master is persuaded that the record in the case at bar does not contain evidence from which going concern value of the commission firms doing business on the live stock market of the Union Stockyards at Omaha, Nebraska, could be accurately determined (Master's Finding 55).

In view of the conclusions reached by the Special Master that the Act of Congress involved in the case at bar, if it can be construed as vesting in the Secretary of Agriculture the right to determine and prescribe the maximum charges to be made by the plaintiffs for their services in buying and selling live stock, is, as to so much of the Act as seeks to vest the Secretary with such authority, unconstitutional, and that the dates prescribed by the Secretary in his order of November 19, 1926, are confiscatory, it is unnecessary to consider the other questions discussed by counsel.

Recommendation

The Special Master recommends that a decree be entered permanently enjoining the enforcement by the defendants of the schedule of rates prescribed by the Secretary in his order of November 19, 1926.

Respectfully submitted.

B. H. Dunham, Special Master.

[File endorsement omitted.]

[fol. 177] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO REPORT OF SPECIAL MASTER—Filed Aug. 4, 1928

Come now the defendants in the above entitled cause by their counsel of record and show unto the court the following as their joint and several exceptions to the report of B. H. Dunham, Special Master, hereinbefore filed July 14, 1928.

I. As to Findings of Fact

1. The Master finds the schedule of rates prescribed by the Secretary of Agriculture in his order of November 19, 1926, to be confiscatory. To this finding the defendants except, for the reason that it is unsupported by any finding as to the reasonable costs of plaintiffs' business, or by any finding that the rates so prescribed are inadequate to defray the reasonable costs of plaintiffs' business, including therein a reasonable return upon property invested by plaintiffs in such business and reasonable market value of personal service contributed thereto; and for the further reason that said finding is unsupported by any evidence that the rates so prescribed by the Secretary are inadequate to cover the reasonable costs of the business as aforesaid.

2. The Master bases his finding that the Secretary's rates are confiscatory in part upon certain computations used to show that the return under such rates is inadequate to cover the actual costs of certain of the plaintiff [fol. 178] commission firms (par. 59f-59g). Such use of actual costs of individual firms, instead of reasonable costs, in testing the validity of the Secretary's rate, is improper and erroneous, for the reason that actual costs can not be used as the basis of rate making where the rate made is to be uniformly employed by numerous business concerns showing varying actual costs.

3. The Master bases his findings that the rate is confiscatory, in part upon his finding that various items of the Secretary's schedule of reasonable costs are less than the average actual per car costs of plaintiffs' business as shown by plaintiffs' audits. Such use of the average costs of plaintiffs' business, as distinguished from the reasonable costs thereof, is improper and erroneous for the reasons:

(a) That it makes of the rate-making power conferred by Congress upon the Secretary of Agriculture a meaningless futility.

(b) That mathematical average costs fail to take account of special and unusual conditions affecting the particular costs of particular firms, which enter into the computation of the average, yet which must be considered in determining reasonable costs and a proper rate.

4. The Master's computation of actual costs above referred to is erroneous because it is based upon the assumption (Par. 46, 47, 58, 59) that the Secretary found the fair market value of good livestock salesmen to be $5,000 a year as to cattle and sheep, and $4,000 a year as to hogs, without regard to the volume of business or number of cars of livestock handled by such salesmen. The Secretary's conclusion and order shows clearly that the Secretary used these figures only as a basis of computation and in relation to an approximate volume of business which salesmen of [fol. 179] that class might reasonably be expected to handle; and there is nothing in the record either before the Secretary or before this court to warrant for these figures the meaning with which they are used by the Master.

5. The defendants except to the Master's finding (Par. 58) that the Packers and Stockyards Act, 1921, permits and requires the Secretary to fix the maximum compensation of owner salesmen of livestock commission firms for their personal services in the selling and buying of livestock. Said finding is not a finding of fact, but a conclusion of law, and as such is erroneous. This power is no more conferred by the Act than is the power to fix the maximum compensation payable for any other commodity or service entering into the conduct of the livestock commission business.

6. The Master bases his finding that the Secretary's rates are confiscatory partly upon computations by which he determines that various items in the Secretary's schedule of reasonable selling costs are insufficient to cover the actual costs of those items in plaintiffs' business as reflected by their audits (Par. 46-55). In addition to the error in the computation and use of these actual costs as above pointed out, the use of these computations in testing the adequacy of the Secretary's rates is further improper for the reason that it fails to consider the margin allowed in the Secretary's rates over and above the total of his schedule of reasonable costs. This allowance amounted approximately to 23% on cattle, 33% on hogs and 50% on sheep, as explained in the Government's brief, pp. 77-78, and is nowhere considered in the master's report.

7. The defendants except to the master's finding that the evidence did not justify the Secretary in disallowing items of expense actually incurred by plaintiffs, in arriving at his schedule of "reasonable costs of selling." The indi- [fol. 180] vidual audits of the fifty-nine commission forms, which were before the Secretary, showed the comparative costs of the various elements entering into the conduct of the business of each of said firms, and showed such costs to be widely variant among the various firms. Voluminous evidence was also before the Secretary as to the conditions under which the livestock commission business was done on the Omaha market as a whole and by each firm in particular. This constituted ample evidence to warrant the Secretary in concluding that certain costs of certain firms were

unreasonable, and in accordingly disallowing such costs, or part thereof, in arriving at a schedule of reasonable costs as a partial basis for fixing a reasonable rate.

8. The Master bases his finding in part upon the assumption that the plaintiff firms will not charge to dealers and speculators the full rate allowed by the Secretary, or that, if so charged, their income therefrom would not be materially increased, for the reason (Finding No. 56) that such full rate would drive dealers and speculators out of business. Finding No. 56, and the assumption so based upon it, as affecting the validity of the Secretary's order, are improper and erroneous;

(a) Because the finding is too speculative, being supported solely by the self-serving testimony of interested witnesses, consisting of prophecy,—not fact;

(b) Because it is contrary to sound economic principles;

(c) Because the use of such a speculative assumption in finding a rate confiscatory in advance of its actual trial is contrary to law, as announced in decisions of the Supreme Court.

9. Defendants except to the Master's findings numbers 35 to 44, for the reason that they are not findings of fact, [fol. 181] as to the conduct of the Gilchrist auditors in the preparation of the exhibits therein referred to, but are merely descriptions of said exhibits and of the mode of their preparation. Said exhibits are incompetent, irrelevant and immaterial as evidence in this case, because:

(a) They are based upon a purported computation of the actual costs of plaintiffs' business, which are not a proper test of the validity of the Secretary's rate.

(b) Because the computation of actual costs therein contained is erroneous and fallacious, being based upon a wrong construction of the Secretary's conclusion and order of November 19, 1926, with respect to the fair market value of the services of livestock salesmen, as more fully set forth in paragraph 4 above.

(c) Because insofar as they set up additional items of cost not covered by the Secretary's audits they are based

upon evidence which plaintiff might well, in the exercise of due diligence, have presented at the Secretary's hearing but which they failed and refused to so present.

10. The defendants further except to the Master's report because of his failure to find:

(a) That the conditions under which the business of plaintiff commission firms is conducted are such as to affect it with the character of a natural monopoly;

(b) That there is no competition between plaintiffs in the fixation of the rates chargeable for their services in the purchase and sale of livestock;

(c) That the Omaha Livestock Exchange fixes the rates [fol. 182] to be charged by its members for selling and buying livestock on a commission basis, subject only to such limitations are are imposed by the Packers and Stockyards Act, 1921;

(d) That the schedule of rates and charges so fixed by the Omaha Livestock Exchange constitutes part of the rules of said Exchange, and that under said rules no member is permitted to depart from the rates so specified in such schedules under penalty of expulsion from membership in the Exchange;

(e) That less than 7% of the livestock commission business on the Omaha stockyards is handled by concerns not members of the Omaha Livestock Exchange and not bound by its schedule of uniform rates;

(f) That it is impractical for a livestock commission firm, not a co-operative, to operate advantageously on the Omaha stockyard as an independent, and without membership in the Omaha Livestock Exchange.

(g) That after shipments of livestock are consigned by the shipper to one of the plaintiffs for sale, it is, in the normal course, impractical for such shipper to recall such shipment from the market or to transfer it to another commission firm, but that such shipment must be sold promptly on arrival at the market by the market agency to which consigned;

(h) That the sites available for the operation of plaintiff commission firms are limited by the physical facilities of the Omaha stockyards;

(i) That plaintiff commission firms furnish necessary services in connection with the flow of livestock through the Omaha stockyards.

[fol. 183] 11. Defendants except to finding No. 36, which purports to accept plaintiffs' exhibit No. 105, for that it is based in part upon exhibit No. 104 and as such is misleading, in that it attempts to show the results of the application of the rates prescribed by the Secretary's order as reasonable by deducting from the revenue derived therefrom the expenses as determined in exhibit No. 104, which are accepted by the master without any consideration of the reasonableness of those expenses other than that they were incurred.

Defendants further except to finding No. 36 insofar as it constitutes an acceptance and approval by the Master of plaintiffs' exhibit No. 105, for that said exhibit is based in part upon plaintiffs' exhibit No. 104 and, therefore, includes in the respective costs of handling livestock of the various firms salesmen's annual salaries of $5,000 for cattle, $4,000 for hogs, and $5,000 for sheep, regardless of the number of cars handled, and also includes in the said costs items of expense not incurred in the livestock commission business.

12. Defendants except to finding Number 37 for that it is immaterial and irrelevant in that it constitutes merely a description of an exhibit in the cause and is not related to any conclusion reached by the Master.

13. Defendant excepts to finding number 38 for that it is immaterial and irrelevant in that it constitutes merely a description of an exhibit in the cause and not related to any conclusion reached by the Master; and defendant further excepts to finding number 38 for that if it should form the basis for any conclusion by this court, it is wholly misleading, in that there is no evidence in the record, either before the Master or the Examiner for the Secretary, to the effect that the capital investment in Exchange member-[fol. 184] ships, other than those set up on the books of the

plaintiffs, constitutes firm assets; and, furthermore, all the evidence in the record is to the effect that capital so invested is regarded as individual assets.

14. Defendants except to finding number 39 for that it is a description of plaintiffs' exhibit No. 111, which is based upon and perpetuates the erroneous methods employed in plaintiffs' exhibits Numbers 104 and 105, described in findings numbers 35 and 36, respectively, to which exceptions have heretofore been taken, which said exceptions are incorporated herein and made a part hereof by reference.

Defendants further except particularly to so much of finding number 39 as states that, "exhibit No. 111 shows the general average cost per car of handling livestock to have been $15.94; the general average commissions which would have been received applying the Secretary's order in the alternative indicated in subdivision (d) above would have been $15.52 and $15.03, respectively;" and as states that, "the averages of the net results shown in the last two columns of the exhibit * * * show that the fifty-six firms as an average would on the 1925 business, applying the Secretary's tariff in the first alternative, have lost 42¢ per car, and applying the Secretary's tariff in the second alternative, would have lost 91¢ per car;" insofar as said findings constitute findings of fact, for that said findings are immaterial and irrelevant to the determination of any issue before the court, in that the use of general averages ascertained as in plaintiffs' exhibit No. 111 is but another way of applying aggregate expenses and aggregate income, and gives no consideration to the actual expenditures of any firm nor to the reasonableness of such expenditures.

15. Defendants except generally to finding number 40 [fol. 185] for that it neither is nor purports to be a finding of any fact other than what plaintiffs' exhibit No. 118 shows and the witness W. B. Tagg testified.

Defendants further except particularly to finding number 40 insofar as it forms a basis for the Master's conclusion that as to the plaintiff, Tagg Brothers and Moorhead, the rates prescribed in the Secretary's order of November 19, 1926, are confiscatory, for that it is immaterial and irrelevant to the conclusion reached, in that the evidence fails to show that the business of said plaintiff is so well

and economically organized and carried on that said plaintiff is entitled to have commissions amounting in the aggregate to enough to yield a reasonable return on the business conducted in excess of the cost shown in the exhibit.

Defendants further except particularly to finding number 40 for that plaintiffs' exhibit No. 118 fails to reflect the increased revenue which would have resulted from the application of the full rates permitted by the Secretary's order to livestock handled for dealers.

16. Defendants except generally to finding number 41 for that it neither is nor purports to be a finding of any fact other than what plaintiffs' exhibit No. 119 shows.

Defendants further except particularly to finding number 41 insofar as it forms a basis for the Master's conclusion that as to the plaintiff, Laverty Brothers, the rates prescribed in the Secretary's order of November 19, 1926, are confiscatory, for that it is immaterial and irrelevant to the conclusion reached, in that the evidence fails to show that the business of said plaintiff is so well and economically organized and carried on that said plaintiff is entitled to have commissions amounting in the aggregate to enough to yield a reasonable return on the business conducted, in excess of the cost shown in the exhibit, and after allowing [fol. 186] in addition thereto a salesmenship expense of $4.00 per car for the cars of hogs actually sold by R. M. Laverty.

Defendants further except particularly to finding number 41 for that plaintiffs' exhibit No. 119 fails to reflect the increased revenue which would have resulted from the application of the full rates permitted by the Secretary's order to livestock handled for dealers.

17. The defendants except to finding number 49 for that the fact that expenses were incurred is not the sole test of their reasonableness; and the defendants further except to finding number 49 for that the finding therein contained that the actual expense of business-getting is $2.54 per car is contrary to the evidence in the cause, and that it is stated to be the actual per car cost of business-getting; whereas, in truth and in fact it is not the actual cost incurred for business-getting by any plaintiff but represents an average obtained by applying the total expenditures of all plain-

tiffs for business-getting to the total number of cars of livestock handled by all plaintiffs, and has no relation to the determination as to whether the rates prescribed by the Secretary for each separate plaintiff are compensatory as to the business done by such plaintiff.

18. Defendants except to finding number 51 for that the aggregate cost to all firms for "all other salaries" is no criterion of the reasonableness of that cost to any of the plaintiffs; and for that the "average per car allowance of $2.18" for "all other salaries" as ascertained from plaintiffs' exhibit No. 104 by the Master, is not the actual cost incurred by any plaintiff and does not represent the reasonable cost; and for that insofar as said finding constitutes a finding that "the Secretary in setting up his cost account of reasonable cost of selling, allowed 34¢ per car less than the actual outlay by the commission forms for other salaries for the year 1925," is contrary to the evidence and not supported by any evidence, in that the finding fails to [fol. 187] show that the allowance of the Secretary is greater or less than the actual outlay of any firm; and for that said finding is immaterial and irrelevant in that the method of reaching the conclusion employs aggregates and averages and gives no consideration to the actual expenditure of any firm nor to the reasonableness of such expenditures.

19. Defendants except to finding number 52 for that the aggregate cost to all firms for overhead, including increased rental, is no criterion of the reasonableness of that cost to any of the plaintiffs; for that the average per car allowance of $2.01 for overhead as ascertained from plaintiffs' exhibit No. 104 by the Master, is not the actual cost incurred by any plaintiff, does not represent the reasonable cost; and for that insofar as said finding constitutes a finding that "the Secretary in setting up his cost account of reasonable cost of selling, allowed an average of 35¢ per car less than the average actual per car outlay by the commission firms for said item of overhead in the year 1925," is contrary to the evidence and not supported by any evidence, in that the finding fails to show that the allowance of the Secretary is greater or less than the actual outlay of any firm; and for that said finding is immaterial

and irrelevant in that the method of reaching the conclusion employs aggregates and averages and gives no consideration to the actual expenditure of any firm nor to the reasonableness of such expenditure of any firm.

Defendants further except to finding number 52 for that the overhead included in plaintiffs' exhibit No. 104 and the per car overhead as found reasonable by the Secretary are not comparable, in that exhibit No. 104 includes in overhead bad debts incurred in the cattle loan business and expenses for miscellaneous items, which are not stockyard services for which rates are made.

[fol. 188] 20. Defendants except to finding number 53 for that it is contrary to the evidence and is misleading, in that it is not a complete and accurate statement with reference to the Secretary's allowance for cost of management.

Defendants further except to finding number 53 for that it employs aggregates and averages rather than the actual cost of individual plaintiff market agencies.

21. Defendants except generally to finding number 57 for that neither said finding nor any finding in the Master's report nor any evidence in the record shows that the business of every one of the plaintiff market agencies is so well and economically organized and carried on that plaintiffs are entitled to have the aggregate of the costs actually incurred by them considered as reasonable in arriving at reasonable rates to be charged by them.

Defendants further except to finding number 57 insofar as it is there found that the Secretary disregarded expenses actually incurred for advertising, for that said finding is contrary to the evidence, in that there is no evidence showing or tending to show that the Secretary did not consider the expenses actually incurred for advertising and reach his conclusion of a reasonable expense after such consideration, and in that the Secretary's order shows in paragraph 19 thereof that the Secretary did consider the expenses actually incurred for advertising.

22. Defendants except to finding number 58 for that it is contrary to the evidence, misleading, and misrepresents the Secretary's order of November 19, 1926, in that the Secretary did not fix nor attempt to fix the salary of any

owner salesman or a maximum or minimum therefor, but did ascertain from the evidence the market price on the Omaha Union Stock Yards of the services of good, employed livestock salesmen and did apply said price to a reasonable year's performance for such salesman and [fol. 189] thereby arrive at the reasonable cost of selling a car of livestock as one of the elements entering into the determination of reasonable rates.

Defendants further except to finding number 58 for that the finding to the effect that the Packers and Stockyards Act requires the Secretary to fix maximum compensation of owner salesmen for personal services in the buying and selling of livestock is a conclusion of law and as such is erroneous.

23. Defendants except to so much of finding number 59 as finds that the rates prescribed by the Secretary in his order of November 19, 1926, are confiscatory, for that it is a conclusion of law and as such is erroneous—and even if it may be regarded as a finding of fact, it is contrary to the weight of evidence in the cause and all the evidence in the cause, and is supported by no evidence in the cause. Defendants further except to finding number 59 for that it is argumentative.

24. Defendants except to finding number 59-a for that it is immaterial, misleading, and is not supported by any competent evidence in the cause and is contrary to all the competent evidence, in that the Master finds that the cost of salesmanship allowed by the Secretary falls short of the actual cost of salesmanship $294,477.20, or an allowance by the Secretary of $2.30 per car for salesmanship less than the actual cost of salesmanship; whereas, in truth and in fact the figures used by the Master are not actual, are taken for the market as a whole, are an aggregate, and an average from an aggregate, and have no material relation to the actual cost of individual plaintiffs whose rates have been fixed by the Secretary.

Defendants further except to finding number 59-a for that the reference therein to "the so-called fair market value of services of good livestock salesmen as found by [fol. 190] the Secretary, is misleading, in that the Master in his computation uses such fair market value divorced from its necessary concomitant of the number of cars

found by the Secretary to be a reasonable year's work for such a salesman, with the result that the Master's computation is based upon the theory that a salesman is entitled to a salary of $5,000 or $4,000 a year regardless of the number of cars sold by him in a year.

25. Defendants except to finding number 59-b for that the Master erred in finding that "if the Secretary's cost per car for 'business-getting' as set up in his cost account, be applied to the business of the fifty-six commission firms for the year 1925, the result is an average per car allowance by him for this item of expense of $0.70 less per car than the average actual per car expense of said commission firms for said item of cost of 'business-getting,' " in that such finding is based upon finding number 49, to which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

26. Defendants except to finding number 59-c for that the Master erred in finding that "if the Secretary's 'reasonable cost of selling' be applied to the business of the fifty-six firms for the year 1925, the result is an average per car allowance by him of $3.93 less than the average actual per car cost of said fifty-six commission firms for handling livestock in the year 1925," in that such finding is based upon finding number 50, to which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

27. Defendants except to finding number 59-d for that the Master erred in finding that "if the Secretary's allowance per car for 'all other salaries' be applied to the business of the fifty-six commission firms for the year 1925, [fol. 191] the result is an average per car allowance for such item of $0.34 per car less than the average actual per car outlay by such commission firms 'for other salaries' for the year 1925," in that such finding is based upon finding number 51, to which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

28. Defendants except to finding number 59-e for that the Master erred in finding that "if the Secretary's allow-

ance per car for 'overhead, including increased rental of $54,000,' be applied to the business of the fifty-six commission firms for the year 1925, the result is an average per car allowance for such item of $0.35 per car less than the average actual per car outlay by the commission firms for said item in the year 1925," in that such finding is based upon finding number 52, to which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

29. Defendants except to finding number 59-f for that the Master erred in finding that "if the adjusted costs of handling livestock by the fifty-six commission firms for the year 1925 be deducted from the commissions which would have been received, applying to that business the rates prescribed by the Secretary's order of November 19, 1926, only twenty firms out of said fity-six firms would have had revenue in excess of their costs," in that said finding is based upon finding number 36, to which exceptions heretofore have been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

30. Defendants except to finding number 59-g for that the Master erred in finding that "if the adjusted costs of handling livestock by the fifty-six commission firms for the year 1925 be deducted from the commissions which would have been received, applying to that business the rates prescribed by the Secretary's order of November 19, 1926, [fol. 192] excluding that portion of the rates applicable to dealers and speculators and including in lieu thereof the commissions actually received on such business under the tariff in effect during the year 1925, only fifteen out of said fifty-six firms would have received revenue in excess of their costs," in that said finding is based upon finding number 36, to which exceptions heretofore have been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

Defendants further except to finding number 59-g for that it is speculative and conjectural.

31. Defendants except to finding number 59-h for that the Master erred in finding that "if there be deducted from the average cost per car of handling livestock in the year 1925 by said fifty-six commission firms, the average

commissions which would have been received on that business, applying thereto the rates prescribed by the Secretary's order of November 19, 1926, said fifty-six firms would have had an average loss of $0.42 per car," in that such finding is based upon finding number 39, to which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

32. Defendants except to finding number 59-i for that the Master erred in finding that "if there be deducted from the average cost per car of handling livestock by said fifty-six commission firms during the year 1925, the average commission which would have been received, applying to said business the rates prescribed by the Secretary in his order of November 19, 1926, excluding increase in dealers and speculators and including in lieu thereof the actual commissions received on dealers' and speculators' sales under the tariff in effect in 1925, said fifty-six commission firms would have had an average loss of $0.91 per car," in that such finding is based upon finding number 39, to [fol. 193] which exceptions have heretofore been taken, which said exceptions are herein incorporated by reference and made applicable to this finding.

Defendants further except to finding number 59-i for that said finding is speculative and conjectural.

33. Defendants except particularly to so much of finding number 59 (contained in the first paragraph on page 53½ of the Master's report) as states that the auditors for the plaintiffs "applied the salaries for resident owners acting as salesmen in the same amount as fixed by the Secretary in paragraph 18 of his conclusions, upon which he based his order of November 19, 1926," for that said finding is contrary to the evidence and not supported by any evidence, and that nowhere in the Secretary's order referred to did the Secretary fix for resident owners the salaries imputed by the auditors for the plaintiffs and applied by them to such owners, nor did the Secretary fix any salaries for any owners, resident or otherwise.

Defendants further except particularly to so much of finding number 59 as is contained in the second paragraph on page 53½ of the Master's report, for that the same neither is nor purports to be a finding of any fact but is

merely an argument in support of facts theretofore found.

Defendants except further to finding number 59 so far as it forms a basis for the Master's conclusion that as to the plaintiffs, Tagg Brothers and Moorhead and R. M. Laverty, the rates prescribed in the Secretary's order of November 19, 1926, are "confiscatory" for that it is immaterial and irrelevant to the conclusion reached, in that the evidence fails to show that each of the businesses of said respective plaintiffs is so well and economically organized and carried on that said respective plaintiffs are entitled to have commissions amounting in the aggregate to enough to yield a reasonable return on the business con- [fol. 194] ducted in excess of the cost shown in the exhibits; and defendants further except particularly to said finding for that each of said exhibits Nos. 118 and 119 fails to reflect the increased revenues which would have resulted from the application of the full rates permitted by the Secretary's order to livestock handled for dealers.

Defendants further except to so much of finding number 59 as indicates that under the Secretary's order including full commissions on livestock handled for dealers only twenty firms would have had revenue in excess of their cost, thirty-six firms would have had no revenue in excess of their cost, and sixty-four per cent of said firms would have had no income in excess of their cost; and that under the rates prescribed by the Secretary, excluding the increased commission on livestock handled for dealers, only fifteen firms would have had revenue in excess of their cost, forty-one firms would have had no revenue in excess of their cost, and seventy-three per cent of the said firms would have had no income in excess of their cost, for that said finding is contrary to the weight of the evidence, is contrary to all the admissible evidence, and is not supported by any admissible evidence, in that it is based upon costs as adjusted by the auditor for the plaintiffs and not upon the reasonable costs; and particularly for that said finding is based upon exhibits wherein the auditors for the plaintiffs have adjusted salesmanship costs so as to allow to some of the firms as little as $3.14, $3.64, and $3.70 per car for the cost of salesmanship, and to other firms as high as $20.04, $21.50, and $28.47 per car for the cost of performing a like salesmanship service; and wherein there is allowed to some firms as the basis of testing the reason-

ableness of rates an expenditure as small as 62 cents, 63 cents, and 64 cents per car, and as high as $4.67, $4.76, and $5.13 per car for the cost of business-getting. (See exhibits Nos. 104 and 111.)

[fol. 195] Defendants further except to so much of finding number 59 as states "and, in reaching the aforesaid results, salaries for resident owners have been treated exactly as the Secretary treated them in building his rate schedule, i. e., they have been figured at $5,000 per year for cattle salesmen, $5,000 for sheep salesmen, and $4,000 per year for hog salesmen," for that said finding is contrary to all of the evidence in the cause and is not supported by any evidence in the cause, in that the undisputed evidence shows that in building his rate schedule the Secretary did not attempt to find or prescribe the salaries which should be allowed or paid to any salesman of any species of livestock, but found the fair market value of the services of a good cattle salesman to be $5,000 per year, a good hog salesman $4,000 per year, and a good sheep salesman $5,000 per year, and further considered that a reasonable year's accomplishment for such salesman was 1,000 cars of cattle, 1,333 1-3 cars of hogs, and 1,000 cars of sheep; and that, therefore, the reasonable cost of salesmanship per car of cattle was $5.00, of hogs $3.00, and of sheep $5.00; whereas, the Master in reaching his conclusion that the rates prescribed by the Secretary are "confiscatory," allowed each and every resident owner cattle salesman $5,000, hog salesman $4,000, and sheep salesman $5,000, regardless of whether he sold or had to sell 144.22 cars of cattle or 1,035.47 cars thereof (table following page 37 of plaintiffs' brief), or 145.83 cars of hogs or 1,581.93 cars thereof, or 142.49 cars of sheep or 1,002.30 cars thereof.

Defendants except to the last paragraph of finding number 59 for that the evidence in this cause does not warrant the Master's finding that the schedule of rates prescribed by the Secretary is "confiscatory."

Defendants further except to the last paragraph of finding number 59 for that the same is not a finding of fact but a conclusion of law and as such is erroneous, in that [fol. 196] it is drawn from and based upon immaterial, irrelevant, erroneous, and insufficient finding of facts, to which exceptions have heretofore been and are hereafter taken; and for that said conclusion is erroneous, in that

insofar as it concludes that the rates prescribed by the Secretary are "confiscatory" as to all plaintiff market agencies, it is contrary to findings numbers 36, 59-f, and 59-g, wherein the Master finds, in effect, that under the most unfavorable application of the rates prescribed by the Secretary, the incomes of each of fifteen firms thereunder would have exceeded in the year 1925 the costs found for those firms by the master.

34. Defendants further except to the report of the Special Master as a whole for that the Special Master has failed to find:

(a) That at the hearing found to have been held before an Examiner representing the Secretary of Agriculture there was introduced and received in evidence substantial evidence to support the finding of the Secretary of Agriculture in paragraph 27 of his order of November 19, 1926, that the schedule of rates and charges therein set forth constituted just and reasonable charges for the services performed by the plaintiff market agencies.

(b) That $1.75 per car for cattle yardmen's salary, $1.50 per car for hog yardmen's salary, and $1.50 per car for sheep yardmen's salary are the per car costs of yardmen's salary, around which cluster the usual, ordinary, and customary per car costs incurred by the plaintiff market agencies for these items.

(c) That $2.00 per car as to cattle, $1.60 per car as to hogs, and $1.80 per car as to sheep are the per car costs of all other salaries, around which cluster the usual, ordi-
[fol. 197] nary, and customary per car costs incurred by the plaintiff market agencies for these items in the year 1925.

(d) That $2.00 per car as to cattle, $1.50 as to hogs, and $2.25 as to sheep for travel, entertainment, advertising, etc., otherwise designated "business-getting," is an allowance sufficient to cover the ordinary business-getting activities reasonably necessary to maintain the existing volume status of the individual plaintiff market agencies, and the allowance of this item as an element of cost in arriving at reasonable rates does not preclude such market agencies

from expending for new business any amounts which may be justified by the new business secured.

(e) That $1.75 per car as to cattle, $1.50 per car as to hogs, and $1.75 per car as to sheep for overhead, including increased rental of $54,000 and excluding $26,129.17 for bad debts incurred in the cattle loan business and miscellaneous expenditures not incident to the commission business, are the per car costs of overhead, around which cluster the usual, ordinary, and customary per car costs incurred by the plaintiff market agencies for these items during the year 1925.

(f) That 25¢ per car as to each species is the per car cost of exchange assessments and dues, around which cluster the usual, ordinary, and customary per car costs incurred by the plaintiff market agencies for this item in the year 1925.

(g) That, upon consideration of the number of cars which a good livestock salesman would be expected to handle in a year in connection with the fair market value of the services of such a salesman for a year's work, the reasonable cost per car for salesmanship is $5.00 for cattle, $3.00 for hogs, and $5.00 for sheep.

[fol. 198] (h) That 50 cents per car as to each species for interest is in excess of the amount around which cluster the usual, ordinary, and customary per car costs incurred by the plaintiff market agencies for interest during the year 1925.

(i) That $1.75 per car as to cattle, $2.15 per car as to hogs, and $4.35 per car as to sheep were allowed by the Secretary in addition to the items specified in paragraph 20 of his order as a profit to compensate for owner management and uninsurable risk, and that these allowances were sufficient to cover owner management, which the plaintiffs claim were omitted, and uninsurable risk.

(j) That substantial additional profits would have resulted in the year 1925 to each of the plaintiff market agencies from the extra service charges prescribed in the Secretary's schedule of reasonable rates.

II. As to Conclusions of Law

1. The Master finds that the Packers and Stockyards Act, 1921, is unconstitutional insofar as it confers upon the Secretary of Agriculture the right to fix the maximum rates chargeable by livestock commission firms on public stockyard markets. To this finding the defendants except for the following reasons:

(a) The finding is a conclusion of law not necessary to the determination of any issue of fact before the Master, and is therefore in excess of the Master's authority under the order of the Court referring the cause to him "to take the testimony and report the same, with his findings and conclusions of fact, to this court for its further determination."

(b) As a conclusion of law the finding is erroneous [fol. 199] because contrary to the law of the United States under its Constitution and the decisions of the Supreme Court of the United States.

Wherefore these defendants pray:

1. That the aforesaid exceptions may be allowed;

2. That the report of the Special Master be wholly disapproved;

3. That the cause of the plaintiffs be dismissed for failure of the evidence to sustain their material allegations; and

4. That these defendants may have such other, further and general relief as the equities of the case may require and as to the Court may seem proper.

James C. Kinsler. James C. Kinsler, United States Attorney. William J. Donovan. William J. Donovan, the Assistant to the Attorney General. H. B. Teegarden. H. B. Teegarden, Special Assistant to the Attorney General.

File endorsement omitted.

[fol. 200] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO CONFIRM REPORT OF SPECIAL MASTER AND FOR DECREE—Filed Sept. 8, 1928

Come now the plaintiffs in the above proceedings and move the court to confirm the report of Special Master B. H. Dunham filed herein on the 14th day of July, 1928, and to enter a decree in accordance therewith making perpetual the temporary injunction heretofore issued in this cause, and for such further order and decree as may be appropriate under the pleadings and findings herein.

Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Solicitors for Plaintiffs. James M. Bell, of Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 201] Minute entry of argument and submission September 28, 1928, omitted in printing.

[fol. 202] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Lewis, Circuit Judge, and Woodrough and Scott, District Judges

OPINION--Filed Dec. 18, 1928

WOODROUGH, District Judge, delivered the opinion of the court:

Plaintiffs, constituting market agencies engaged in the buying and selling of livestock on commission at the Union Stockyards at Omaha, Nebraska, bring this suit against defendants to enjoin the enforcement of an order of November 19, 1926, made by defendant, William M. Jardine, as Secretary of Agriculture of the United States, under what is known as the Packers and Stockyards Act of August 15, 1921, (Chapter 64, 42 Statutes at Large 159;

U. S. C. 1925, Title 7, Chapter 9), yhich said order of November 19, 1926, suspended the tariff of rates theretofore in effect at the Union Stockyards at Omaha, Nebraska, for the buying and selling of livestock on commission, by market agencies on said market, and prescribed, in lieu thereof, a new schedule, effective January 1, 1927, fixing the maximum commission rates chargeable for the purchase and sale of livestock by such market agencies.

The three original plaintiffs are a corporation, an individual and a copartnership respectively suing on their own behalf and on behalf of all others similarly situated. Later other market agencies doing the same kind of business at the same place filed their petition of additional parties in the same case.

[fol. 203] Plaintiffs say that the act is void so far as it empowers the Secretary to fix rates for the service of the market agencies; that the language of the act does not purport to give the Secretary any power to enforce his rate schedules with penalties; and that the rates which he has fixed are not compensatory and confiscatory.

There is no doubt that the market agencies at the South Omaha Yards are engaged in interstate commerce and are therefore subject to lawful supervision by the federal authority, because in the commission men's suit to settle that question, the supreme court squarely decided that they were. (Stafford vs. Wallace 258 U. S. 495) I think that the issues in the Stafford case presented for the court's consideration the question of the Secretary's power to fix the rates of the market agencies and that the language used in the opinion and the later opinion—Board of Trade vs. Oleson, 262 U. S. 1, 34—indicates a conclusion reached by the supreme court in favor of the existence of the power of the Secretary. However, as the supreme court did not directly discuss the question it may be treated as open for decision in this case.

The plaintiffs say that there is no power to fix their rates and charges because their work is really like that of wage workers or men who hire out their energies, skill and brains in the service of others in a personal way, and that it would deprive them without due process of their liberty, and their property right to bargain for their work if the government should impose rates upon them. The use of

capital plays very little part in the performance of their function by the market agencies. As the Secretary says in the order complained of "The value of property used is relatively small" and the master in his report notes that a former practice of making advances to customers is being discontinued, tending further to lessen the use of capital. In the argument of the case from another and [fol. 204] alternative angle the use of capital in the business and the matter of returns upon it, depreciation et cetera are stressed; but here, the commission men picture themselves as men who go upon the market with their skill developed in a highly specialized vocation and there work for such customers as choose to hire them in strenuous and open competition with all others similarly engaged. They contend they ought to be as free to bargain for the price of their work as any other workmen and that to take away the right is to deprive them of liberty. They might concede the power of Congress to limit by regulation the rates they may get upon their invested capital used in the business but that is a secondary matter. The total compensation of all the market agencies amounts to less than one per cent of the value of the stuff they handle; most of it is pay for skilled services and the main purpose and effect of the Secretary's order is to reduce that pay.

For many years the agencies have operated under a schedule of rates fixed by their Omaha exchange and undoubtedly the fact that the rates are so fixed by an organization of which the commission men and traders are members and their customers, the livestock owners and shippers, are not, inclines public authority to take a hand in the matter. The Secretary of Agriculture says in his order now under attack in this case "If the owners of the 58 firms or corporations composing the respondents can through a committee or whatever other machinery they see fit to adopt, arrive at the rates to be charged the shipper a disinterested governmental agency can fairly arrive at such rates."

There does seem to be an incongruity between the fact that the commission men operate under uniform, fixed rates and yet make the claim that the sovereign power can not require that the rates be reasonable. But it is said railroad employees work directly in interstate commerce

[fol. 205] and the individuals have long since surrendered to their unions their natural right to fix their wages, still only great emergency would justify fixing a standard even temporarily. So notwithstanding their rates fixed by their stock exchange these plaintiffs still insist that they are in a like case with workers in the handicrafts or professions generally and immune from rate fixing.

The master, after study of all the authorities, thinks that the plaintiffs are right and that the Secretary's rate fixing order is void. He cites many expressions in the opinions of the courts which standing alone would appear to sustain him. But we do not agree. We are not persuaded that it is within the power of the plaintiffs to combine and agree among themselves upon commissions that would be exorbitant enough to destroy the market and the interstate commerce and yet remain beyond the reach of federal regulation. We are satisfied that Congress has full power to regulate this commerce in the basic food supply of the nation throughout the long channel through which it flows. At the one spot of greatest concentration—in a few hours when the commission men have all of the stuff of the commerce in their own hands the commerce cannot be and is not beyond the pale. If a course of reasoning leads to that end there is a flaw in it.

The evidence convinces us that the services of the market agencies to which the Secretary's rate attaches are the services of a business, and that the business is affected with the public use. The public use is clearly shown by the circumstances under which the business is carried on.

If the public stockyards company itself performed the marketing function in its yards there would certainly be no question of the public use. There would be obvious the use of the public utilities; the immediate pressing necessary [fol. 206] character of the service; the situation which imposes an obligation to serve all comers and all alike; the disparate position of those who have the property in their hands and control with power to sell and those who own it and all of the incidents to justify governmental prevention of extortion and regulation of rates. The gist of the business is no different because the public stockyards company assigns and turns over the use of its public facilities to the marketing agencies for the performance of their function

and lets them carry on the marketing in the yards. The public use and incidental obligations are all present.

Plaintiff's arguments to the effect that the Secretary cannot measure rate of return for brain power or fix a per cent on the sweat of the brow or reconcile the power to regulate and the right of the individual to be free from any confiscation of his liberties are interesting—possibly embarrassing. But regulation is the daughter of necessity. When open competition is lacking and monopolistic combination would fix its own rate necessity arises. Inanimate property of itself neither serves nor produces without human brain and sweat to guide and drive. So in all regulation there is involved the regulation of the services of man.

The flow of this commerce through the stockyards may be likened to the course of travel across a toll bridge and there is an analogy if you picture such a bridge equipped with a toll gate at both its ends. When the travelers go upon the bridge, the bridge owner lifts the toll bar and collects the tolls, but when they come to the other end there is a group of men who have an arrangement with the bridge owner to lift the other toll bar for a price. Would it not be absurd to say that the bridge owner's prices may be regulated, but that the others can get together and charge anything they please—that the travelers may be protected [fol. 207] from extortion in getting on to the bridge but not when they come to getting off? Certainly if the bridge owner's business is affected with a public use, the business of those who control the means of getting off the bridge is so a fortiori.

Nobody imagines that the stockyards company does not get compensation for use of its very costly facilities and its services. It exacts toll as the commerce goes through. It makes a charge for hay and the like. The commerce cannot go through however, until the plaintiffs perform their function any more than the traveler can get over the bridge until the last bar is lifted. If plaintiffs' function then is beyond regulation, all the rest of the regulation might become futile. We find no such impotency in the government.

It does not appear that any one of the numerous regulation cases which cause sharp division in the supreme

court is exactly analogous to this. None of the cases where power to fix rates is denied present a business so plainly affected with public use consisting so largely of personal service. We do not find any declaration by the supreme court that a business consisting mostly of personal services may not become affected with a public use or that there is no public right of self defense against extortion merely because personal services rather than property uses furnish the excuse. In the cases where legislative attempts to regulate wages were frustrated the persons to be regulated had not gotten themselves in such a position towards their public that the public ought to be held to have a right in regard to the business—the right to be dealt withf airly and justly.

If we are right about the real relation of these plaintiffs to the commerce and to livestock and to their customers—if they are in any real degree like the men at the far end of the toll bridge—in such a dominant position by reason of [fol. 208] their arrangements with the public stock yards and their combination among themselves and their control over the livestock and the commerce, then their business is as clearly affected with a public use as is the business of the carrier that moves the live stock to the pens or of the stock yard company that receive it into its pens and affords the egress therefrom. If so it ought to be lawful to subject plaintiffs to regulation both as to their practices and their charges.

The problem of how to fix a reasonable and just rate such as the law requires the Secretary to fix is a very real problem. Here the plaintiffs' function is a stockyard service but the stock yard owner does not have direct interest in the selling charges. Most public utilities that have great properties like the stockyards company, use their properties themselves in serving the public. When they do, rate making bodies are not entirely free to dictate the pay of employees by means of rate fixing. No court declares that utilities can pay out absurd or extraordinary sums that would amount to a fraud and so cover up an extortion. On the contrary the law is that extraordinary or unnecessary costs of operation or management cannot be permitted to cover unreasonable or unjust rates.

Of course if the public stockyards company performed the marketing function itself its corporate interest would be to keep down the cost of the function. Its honest discretion in compensating its employees for the work would not have to be interfered with. But where the stockyard company turns the facilities over to the marketing agencies and they combine among themselves to fix their rates different principles operate.

There is nothing in the evidence to show what considerations have determined the rates, which have been fixed heretofore by the exchange and which are to be supplanted by the Secretary's schedule of lower rates. It may be as- [fol. 209] sumed, however, that the effort of the exchange has been to fix rates high enough to compensate the efficient, low enough to keep out incompetents, always within the margin of what the traffic would bear and with all just and reasonable. In view of the fact however, that the business is affected with a public use and that it is a necessary part of the interstate commerce in food for the nation, the final arbitor as to whether the charges to be imposed upon the commerce are reasonable or not must be the government when it chooses to exercise its power and not the stock exchange. Accordingly it falls to the Secretary, under the Packers and Stockyards Act to consider what rate is high enough to compensate the efficient, low enough to restrain destructive scrambles for the business among too many agencies, and within the margin of the value of the service to the shippers; and on the whole case to fix reasonable rates just to all. A most delicate function obviously, but, if necessary, possible.

To that end he must and does have the power to inquire into all of the details of the marketing agencies' business as it has been and is carried on and to fix a maximum price reasonable and proper to be charged. It appears to us from the evidence that the Secretary through the various steps leading up to his final order has been guided by proper considerations. He accorded the parties in interest a hearing and from oral evidence and extensive audits of each and all of the marketing agencies concerned, the Secretary undoubtedly had data before him sufficient to build up a rate schedule. He had disclosed to him each and all of the details and items of expense that go to the perform-

ance of the function; he found a maximum reasonably chargeable for each detail and adding them together he fixed a maximum charge for the whole service.

[fol. 210] There were about sixty agencies operating on the Omaha Yards in 1925. Audits of their books and full investigation of the business of each showed such wide variations in the amount of livestock hand-ed by each, in the cost of the service rendered by each and in the resultant profit or loss to each, as to seemingly cause the Secretary to believe the business was overdone and overmanned, of which there was some testimony corroborated by the audits; hence he was unable to find from the transactions themselves any common ground of reasonable maximum charges for the services. The highest number of cars of all species handled that year by any one agency was 6572 and the lowest 250. The exchange had always had a schedule of rates of its own, and was operating under schedule of its own making during that year. Some of the agencies doing a large business showed profits and some losses; and some of the agencies doing a small business showed profits and some losses. This was due, of course, to the expense accounts passed on to the shippers within the limit of the rates. There was a wide difference in the amounts expended for advertising, traveling solicitors, and entertainment of clients, in the cost of merely selling or buying, which is largely done by employees who are especially competent for that service, and in some firms by the owner or owners who are likewise competent but who may or may not serve on a salary basis. According to tabulations made up from the audits for the year 1925, there was no uniformity in these items of cost. No two firms were alike in that respect. The selling cost per car was approximately twice as much for some firms as it was for others, and also for advertising, etc. Generally the selling cost was much less per car for the firms doing a comparatively large business than for those doing less, but as to this there was great variation between firms handling approximately the same number of cars. So with other items of out-of-pocket costs. Under these conditions the Secretary declined to adopt averages of [fol. 211] actual cost to the different agencies and set before himself the task of finding the normal and reasonable cost per car of rendering the service for each species, cattle, hogs and sheep. Then, itemizing the out-of-pocket

cost apportioned on a per car basis for each species he said that in each instance the figure adopted was "A normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management in their business." This resulted in his finding that the reasonable cost of handling a car in the year 1925 on the Omaha market of the different species was as follows: Cattle $13.25, hogs $9.85, sheep $13.05. The petitioners insist that these costs are in each instance too low, that they cannot render the necessary efficient service without expending more and that there will be no margin of profits in the Secretary's basic rates of $15.00 per car for cattle, $12.00 for hogs and $18.00 for a double-deck car of sheep.

The primary service of the commission firms to the shipper is to sell the livestock on the market at the best price obtainable. Every market agency has its man or men on the market to do that particular job. Many of the men who do the actual selling on the market are owners or part owners of the business and many are merely hired men. The Secretary was of opinion from the evidence before him that five dollars a car was the maximum amount that the agencies should be permitted to include in their commission charges on account of this work of actually selling cattle and sheep and three dollars for hogs. The dispute over the action of the Secretary based on that conclusion presents the main bone of contention in the whole case.

The plaintiffs say that the per car limit for selling is so low that it is not compensatory, that it is below actual cost, that it is confiscatory and that it will cause many of [fol. 212] them to do business at a loss and so be driven out of business.

There is no uncertainty about how the Secretary came to use the per car limit for selling as a cost item in service in arriving at the rates in his schedule. It was shown to the Secretary that some of the men who do this selling on the market sell a great many cattle and some sell very few. Some are working for high wages and some for much lower and others again as owners of the business, charge all there is left in the business after paying expenses to this selling job performed by themselves. The Secretary was not concerned with nor attempting to say just what a cattle salesman should be paid. It was his task to find a maximum per car for this work beyond which anything

charged would be unreasonable. To that end he considered how many cars a man could sell in a day if he had the cars to sell and also how many cars the men engaged actually do sell in the course of the business. From the whole the Secretary concluded that good cattle and sheep salesmen were being paid salaries of $5,000.00 and hog salesmen $4,000.00 and that any good cattle and sheep salesman can readily sell a thousand cars of cattle or sheep in a year if he has that many to sell and any good hog salesman could easily sell 1,333 cars of hogs in a year. There was in fact uncontradicted proof that each could sell many more cars. If he sells more cars per year, as some salesmen do, the Secretary has done nothing to prevent more than five thousand dollars being paid to the salesmen, either as a wage or as a charge against the business if the salesman is the owner. The Secretary has not acted then on any mere theoretical estimation but on actual experience as disclosed by the evidence. He finds from the evidence before him that the work can be done within the cost he has fixed as a maximum because it is being done. Indeed, out of 147 salesmen working for wages only four as shown to earn as much as five thousand dollars a year. Therefore, [fol. 213] the Secretary's action in arriving at this cost item appears to be within his powers and discretion and supported by the proof. It was not incumbent upon the Secretary to fix the rates so high that all agencies in the business would make money whether they did substantial business or not. The stock exchange itself did not attempt that. No one nor an average of all of the great many different extremes and variants of cost figures could be accepted as a reasonable standard. The audits for 1925 showed that this one item ranged from $4.00 to $20.00 per car, the firms with large business have lower costs. So the Secretary in the exercise of his discretion and judgment decided that five dollars a car for selling cattle and sheep and three dollars per car for selling hogs was as much as ought to be imposed upon the commerce. We cannot find in the record any grounds upon which the court has any power to set aside that conclusion.

The plaintiffs have caused elaborate audits to be made from the books of the agencies to show that if each should charge up five thousand dollars a year on account of the

services of each salesman employed or owner-salesman in 1925, many agencies would have a balance in red at the end of the year, if the Secretary's schedule should be applied. Arguments are built up on this fact. It is a fact and a very obvious one but it in nowise tends to prove that the Secretary's order is oppressive or unjust. Those estimates are made by taking credit for expenses which the Secretary condemned as excessive and unnecessary.

Neither do we find the extensive computation concerning averages to be material. The audits show, and indeed, it is obvious that the Secretary did not find a figure of five dollars a car for cattle and sheep salesman cost and three dollars for hogs, from any average of the costs to the dif- [fol. 214] ferent agencies. This salesman cost item was very high to some agencies and low to others. To add the two extreme figures together and divide by two and so reach an average would be no indication whatever of what a reasonable cost was. No significance can be attached to the many ways in which the auditors have used their computations as to averages. The shippers and public are entitled under the law to have the charges kept within a reasonable figure and the Secretary is to judge of that upon evidence. The Secretary, having exercised his judgment, the court cannot interfere except on a showing that the Secretary was wrong. But merely to show that he did not adopt or apply a mathematical mean between two extremes in no way tends to show that he was wrong. On the contrary, the adoption of such a mathematical mean would, as in the case of jury verdicts, suggest gross error on the face of it. The proof does not satisfy therefore that the salesman cost item is oppressive or unreasonably low.

The Secretary found a maximum for the other items of costs of carrying on the market agencies in substantially the same way that he arrived at the salesman cost. He refused to be bound by either the lowest cost he found or by the highest or by any mathematical average. He found the cost which he deemed normal and reasonable, well below the highest and well above the lowest. As to each item there is proof that some agencies are getting the thing done in actual operation well within the maximum fixed. In each instance there are some agencies that are not keeping within the maximum. Necessarily so. Undoubtedly if

rates were fixed so high that certain profits were assured to all regardless, the agencies would multiply much faster than livestock could be brought to the market and an endless chain of rate increases would be necessary. It is not the purpose of the regulation to bring this about. The Exchange is an unincorporated association composed of [fol. 215] the agencies and we see no reason why reasonable limitations may not be put upon the number of its members.

Outside of specific items, for which he made allowance as necessary parts of the costs of the market agency service, the Secretary allowed an item of overhead and another of interest, but it is insisted that there are items of bad debts, supervision, use of invested capital and good will or going concern value not taken into account by the Secretary. The testimony taken before the master does tend to show that the Secretary was not fully apprised by the plaintiffs at the hearing before the examiner of all overhead cost items that might be taken into account for rate fixing. It does appear that some of the plaintiffs have built up good will of value, but, as the master reports there are no data to evaluate such items with any certainty. The effort of good will in this business is to bring the livestock to the particular agency which has the good will with less cost for business getting. Such good enables the firms that have it to do more business with less expense for business getting. I doubt if the fact that some of the agencies have that good will among shippers should compel the uniform rates to be higher than they would be if all the business had to be gotten at high cost. The Secretary made an allowance for business getting which included advertising etc., as a part of the costs of service, carried in the rate schedule, as were all other costs. We are not convinced this item is too low. The Secretary did not take into account as a separate item the value of all of the exchange memberships of the salesman. He did consider the membership carried on the books of the agencies but those that were not so carried he did not consider. Neither did he make any separate allowance for bad debts or supervision.

It may be that the Secretary was in error on these matters. But in the first place they were not called to his

attention at the hearing before his examiner, and in the second place, it cannot be said that the rate that has been [fol. 216] made up without direct allowance on account of them is in fact going to be confiscatory. In fact the item of expense estimated by the Secretary on an interest basis of seven percent for property used in the business seem to reach a capital asset large enough to include the omitted memberships. Notwithstanding that some agencies have had bad debts, and some have an expense for supervision, it may well be that the rates will work out in practice without oppression or unfairness. In advance of an application of the rates to the test of practice the court ought not to interfere because there is a mere possibility of inadequate return.

It is hardly to be imagined that every possible cost of every one of the fifty-nine different concerns examined by the Secretary would be specifically referred to and covered in such an order as made by the Secretary. But where, as in this case, the rate maker has provided a margin and spread for such contingencies the courts must keep hands off until there has been practical application.

The plaintiffs also claim that the audits of the business of the plaintiffs, Tagg Brothers and Moorhead, and the business of R. M. Laverty show that those concerns would lose money under the Secretary's rates. As to Tagg Brothers and Moorhead, they would, if the condemned excesses in expenses be continued and the increased rates allowed by the Secretary be disregarded. These increased rates apply only to speculators. It appears that the practice has become established for the plaintiffs to charge a certain class of persons called speculators or yard traders half the regular commission which shippers generally have to pay for the same service. The Secretary evidently thinks this discrimination improper and in his schedule he eliminates it and authorizes the plaintiffs to charge such traders and speculators the same rate that apply to all others. Both [fol. 217] the commission men and the speculators are certain that the whole business of buying for resale on the market will quit, to the detriment of the live stock industry, unless the discriminatory rates are continued, but that is prophesy.

The court has no function where such forecasts of the future clash. Abstractly, speculation appears to be a feature of all open markets everywhere and might continue at South Omaha even without discriminator commission rates in favor of speculators. But the future, and not the courts, must determine. It follows that the showing of probable loss to Tagg Brothers and Moorhead on the hypothesis of half rates to speculators instead of full rates as prescribed by the Secretary is immaterial. A similar audit showing as to the business of R. M. Laverty is equally immaterial.

It is also argued by the plaintiffs that on account of the wording of the statute there may be an interpretation that the penalties do not apply to disobedience to the Secretary's rate order. The natural interpretation is to the contrary. It is plain that Congress not only intended to prescribe harsh penalties for any refusal to obey the rate orders of the Secretary, but so stated in the act with reasonable clarity. Eliminating matter not relevant to this particular question by means of asterisks the statute says, Section 305 "All rates * * * made for any stockyard service furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable and non discriminatory and any unjust, unreasonable or discriminatory rate * * * is prohibited and declared to be unlawful."

Section 310. "Whenever * * * the Secretary is of the opinion that any rate * * * of a stock yard owner or market agency, for or in connection with the furnishing of stockyard service is unjust * * * the Secretary may de- [fol. 218] termine and prescribe what will be the just and reasonable * * * rates * * * and may make an order that such owner or operator shall * * * not thereafter * * * collect * * * any rate * * * for the furnishing of stockyard services other than the rate prescribed * * *."

Section 301. "The term 'Stockyard services' means services furnished at a stockyard in connection with * * * the buying and selling on a commission basis * * *."

Section 314. "Any * * * market agency who knowingly fails to obey any order made under the provisions of Section 310 shall forfeit 500.00 * * * for each offense."

It is clear that the subject matter of Section 310 is the regulation of stockyard services. The reference to "such owner and operator" is to the "Stockyard owner" as that term is defined in the statute, including "ANY person engaged in the business of conducting or operating a stock yard," and to the operator of a market agency. Although the powers of the Secretary in question must be clearly and unequivocally conferred in order to stand up, I think the language of the statute meets the requirement and plainly confers the powers.

On issue joined the plaintiffs applied for a master to take and report the evidence in the case. This was objected to by counsel for defendants. He insisted that an examination of the proof taken by the Secretary's examiner, which was tendered and on which the Secretary made his order, establishing a new schedule of rates, would unquestionably disclose there was substantial evidence before the Secretary taken by the examiner to sustain the Secretary's order. Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S. 541, Seaboard Air Line Railway Co. v. United States, 254 U. S. 57, 62; United States v. L. & N. R. R., 235 U. S. 314, 321. But it appeared that the order of the [fol. 219] Secretary for the hearing before the examiner, served on the respondents there, plaintiffs here, did not advise the respondents of any intention or purpose of the Secretary to fix a new schedule of rates. And it was insisted that the respondents were led to believe from the terms of the order that the only inquiry by the Secretary through his examiner would be whether a schedule of rates known as Tariff No. 2, which the Omaha Stock Exchange had recently theretofore adopted to take the place of a then existing schedule, Tariff No. 1, prescribed excessive rates; and it was insisted that if the Secretary's inquiry and action was to extend no further than his order and notice indicated it would extend, a finding by him that Tariff No. 2 was excessive would have automatically left Tariff No. 1 in effect, which carries rates higher than those prescribed in the Secretary's order,—hence plaintiffs would be deprived of their rights without having been given an opportunity to be heard. And they further said, without contradiction, that at no time during the hearing before the examiner did he give notice of any intention on

the part of the Secretary to himself establish a schedule of rates. The Secretary's order for the examiner's hearing recited:

"That on or about the 16th day of January, 1926, the respondents made and published, effective January 26, 1926, and have filed a new schedule of rates and charges designated as Tariff No. 2, for the buying and selling of livestock in commerce at said Stock Yards, stating new rates and charges, several of which are materially different from and greater than those set forth in their schedules now on file, to all of which schedules reference is herein made for comparison of the rates and charges specified therein; that upon an examination of the records and other information in the possession of the Department of Agriculture the Secretary of Agriculture has reason to believe that the increases proposed by such new schedules are not justi- [fol. 220] fied at this time and that such increases are in fact unreasonable. And it therefore appeared that a proceeding under Title III of the Packers and Stock Yards Act 1921 should be had for the purpose of determining the reasonableness and lawfulness of such new rates and charges; and that pending hearing thereof the decision of the Secretary of Agriculture on the operation of said Tariff No. 2 should be suspended and its use deferred."

It was thereupon ordered that said Tariff No. 2 be temporarily suspended and deferred, and "that notice to the above-mentioned respondents is hereby given that a hearing upon the reasonableness and lawfulness of the said schedule of rates and charges will be held before an examiner of the Packers and Stock Yards Administration in the court room of the United States District Court at Omaha, Nebraska, beginning on the 24th day of February, 1926, at the hour of ten o'clock A. M. or as soon thereafter as the parties may be heard and continuing from time to time until said hearing is completed. At the above hearing the above named respondents will have the right to appear and show cause why a further order in respect to the said schedule of rates and charges should not be made by the Secretary of Agriculture in conformity with the provisions of Title III of the Packers and Stock Yards Act 1921." And so on these facts we made the reference and the master took and reported the testimony offered

on behalf of the plaintiffs in their attack on the schedule of rates made and established by the Secretary to take the place of pre-existing rates. Some of the plaintiffs testified at length before the master. They themselves had had their books audited by expert accountants. Their audits were in substantial agreement with audits made by expert accountants acting for the Secretary prior to the hearing before the examiner and were, perhaps, the most [fol. 221] substantial proof submitted to the secretary before he made his order. The accountants for the plaintiffs made up a number of sheets which disclosed the amount of business done by each agency in 1925, of cost to each for salesmen's services, for salaries, for other help, for advertising, etc.; in fact, the expenses incurred by each firm in conducting its business during the year 1925. Also sheets showing the profits and loss to each firm during that year if the rates prescribed by the Secretary should have been applied. On that basis many of them would have suffered a loss and but few of them would have made substantial profits. But the outlays for expenses included in those sheets were in many respects items which the Secretary found to be unnecessary in carrying on the business and excessive. These we have considered with all of the other evidence before the master, as well as the whole record before the examiner offered by plaintiffs; and we are led to the conclusion from the facts in the case that the attack on the Secretary's order has not been sustained, that the temporary injunction heretofore issued should be dissolved, and that the bill should be dismissed at plaintiff's cost. It is so ordered.

[File endorsement omitted.]

[fol. 222] IN UNITED STATES DISTRICT COURT

No. 847. Equity

TAGG BROTHERS AND MOORHEAD, a Corporation, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA et al., Defendants

(Before Judge Robert E. Lewis, Judge George C. Scott, and Judge J. W. Woodrough)

DECREE—Dec. 1, 1928

In accordance with the views expressed in the Opinion of the Court, it is

Ordered by the Court that the amended petition and intervention by additional parties be, and the same are hereby dismissed, at plaintiffs' cost and, that the temporary injunction heretofore granted be and the same is hereby dissolved and set aside.

Plaintiffs and interveners each separately except.

[fol. 223] [File endorsement omitted.]

[fol. 224] IN UNITED STATES DISTRICT COURT

In Equity. No. 847

TAGG BROS. & MOORHEAD, a Corporation, et al., Petitioners,

vs.

UNITED STATES OF AMERICA et al., Respondents

Statement of the Evidence

The cause having been referred to Hon. B. H. Dunham, Special Master, the evidence introduced before him, and reported by him to the Court and considered by Hon. Robert E. Lewis, Circuit Judge, Hon. J. W. Woodrough, District

Judge, and Hon. George C. Scott, District Judge, all sitting as judges of the Court, was as follows:

OFFERS IN EVIDENCE

Plaintiff offered in evidence all testimony taken before the Secretary of Agriculture, consisting of oral testimony, Exhibits 1-98 inclusive, Exhibit A, and respondents' Exhibit 1, with the work sheets referred to in the oral testimony. Transcript of the oral testimony was identified as Exhibit 99; the work sheets as Exhibits 100 and 100-A; and work sheets upon which were based the volume reports referred to in the oral testimony as Exhibit 101; a schedule of figures prepared and presented to the Secretary upon the oral argument before him as Exhibit 102; Exhibits 1-98 [fol. 225] inclusive, 100-102 inclusive, Exhibit A and respondent's Exhibit 1, constituting all the exhibits, and Exhibit 99, constituting a transcript of all the oral evidence received by the Secretary.

The oral evidence received by the Secretary (Exhibit 99) is, in substance, as follows:

EXHIBIT 99

It was admitted that the Union Stockyards at Omaha had been posted and that the several respondents are market agencies who have registered as such with the Secretary of Agriculture.

The Government offered in evidence Exhibit 1, photostat copies of a letter of June 14, 1922, from Mr. A. F. Stryker, Secretary-Traffic Manager of the Omaha Livestock Exchange, purporting to transmit the schedule of rates and charges to be made by commission firms or market agencies. These sheets, together with supplements, constitute the schedule of rates and charges in effect.

Government offered in evidence Exhibit 2, which is Tariff No. 2 concerning the reasonableness of which the inquiry is being made.

All witnesses except W. E. Fink were called by the Government. Mr. Fink was called by the attorney for the respondents and made a witness for the respondents.

W. B. WYMAN: Cashier, Joint Railroad Agency. This agency handles all of the business coming into the stock-

yards over the different railroads for the stockyards, commission men, and packing houses. He has charge of all livestock bills and accounts and audits them. The railroads deliver the livestock to the stockyards and the Stockyards Company moves the cars over the stockyard lines to the unloading chutes. It is unloaded for the railroads by employees of the stockyards. The Joint Railroad Agency renders bills due for freight to the different livestock commission firms. It calculates charges on minimum weight and sends three copies to the consignee. The form contains the name of the delivering railroad, the consignee, the consignor, point of origin, car number, count necessary, yard count as shown on unloading tab, minimum weight, with the weight and the extension, and weight less fill. Excess above minimum weight is entered on the form by commission men and extension made by them. These weights are verified daily by the Western Weighing and Inspection Bureau. A statement based upon information contained in this form is rendered to the commission firms. Collection is made from the Stockyards Company every third day. Freight is paid in a lump sum by the Stockyards Company, which in turn collects from the commission men.

Form No. 1002 received in evidence as Ex. 3.

[fol. 226] Cross-examination:

Even in the case of mixed loads the commission companies take the weights to the Joint Railroad Agency where the extensions are made. In some cases, however, where no decisions have to be made and where there is no possibility of a smaller or greater charge arising, extensions are made by the commission men.

In the case of mixed cars the highest weight and the highest rate are applicable, except on intrastate shipments. In that case cattle weights and rates would be shown, but if the calf weight and rate happen to be less than the cattle rate, the calf rate would rule. On interstate shipments cattle and calves take the same rate.

In case of mistakes, if more freight is collected from the commission firms than is due on a shipment, a refund is made. If too little is collected and the commission firms have already remitted to the shipper, the commission firms

are not held liable. The Agency then makes an effort to collect the amount of the undercharge from the shipper.

WILLIAM B. CHEEK: Is engaged in the insurance business and has his office in the Exchange Building. His principal business is the insuring of livestock in transit, which is voluntary with the shipper. He also handles indemnity and fidelity bonds for the Hartford Accident and Indemnity Company of Hartford, Conn. Livestock arriving at the yards is insured against fire and lightning at the rate of 15¢ per car regardless of value, and a bill for this service is rendered monthly to the Secretary of the Livestock Exchange who pays it and collects from the members. Fidelity bonds are written for livestock commission men or firms. A copy of these bonds is filed with the Livestock Exchange and a copy with the Packers and Stockyards Administration.

In determining the number of carloads of drive-in stock, the number of head of hogs is divided by 70, the number of cattle by 25, the number of sheep by 100, and the number of calves by 60. The rate on the bonds filed with the Livestock Exchange and with the Packers and Stockyards Administration is $4.00 per thousand.

Cross-examination:

The commission companies also give a $10,000 bond to the Stockyards Company to cover freight, feed, and yardage, the rate upon which is $2.00 a thousand. A mortgage and theft bond is also issued to each member of the Exchange. The premium is 10¢ a car, collected from each firm. The taking out of this bond by the commission company is a voluntary matter.

W. G. TAGG (Tagg Brothers and Moorhead): Livestock coming in carload lots is delivered to the Stockyards Company, and unloaded by the Company in the chutes. In the case of his particular firm about one-half of the time the stock is delivered by the Stockyards Company into the pens

[fol. 227] of Tagg Brothers and Moorhead. After the stock is delivered into the pens it is sorted.

It is customary to put a carload of cattle in the alley and sort for steers, cows, heifers, bulls, and stags. These might sort into stockers and feeders. After sorting each unit is put into a pen by itself or marked and put into the same pen. His firm has three cattle salesmen, each of them handling a particular kind; one the steers, one the butcher stock, and one the bulls and calves. He defined butcher stock as cows, heifers, and she stock. After sorting the cattle are watered and fed. The Stockyards Company furnishes the feed, the actual work being done sometimes by an employee of the commission firm and sometimes by an employee of the Stockyards Company. The cost of the feed is put on the account sales rendered to the shipper and deducted from the selling price of the cattle. After feeding and watering the cattle are offered for sale. Fat cattle are sold to the packers, and stock cattle and feeders are sold either to the yard buyers, country buyers, country feeders or order buyers. Whether the buyers seek the sellers or the buyers depends upon the market. The seller sets a price on animals and the buyer accepts, rejects, or makes a lower offer. When the cattle are sold they are weighed to the purchaser. The weigh-master is an employee of the Stockyards Company. The employees of the Stockyards Company take the animals to the scales and the inspector, who is hired by the commission men, tells the different firms when their turn comes and assists them in weighing. The inspector is an employee of the Livestock Exchange and paid by an assessment made on the commission firms in proportion to the number of cattle they weigh at that scale. The charge for weighing is included in the yardage assessed by the Stockyards Company. Animals pass out of the hands of the commission firm when they go over the scales. After the cattle are weighed, employees of the commission men get the scale tickets from the Stockyards Company and take them back to the salesmen, who marks the price for which the cattle are sold. These tickets are sent to the office where the bookkeeper calculates the amount due the shipper. The charges assessed against the shipper are freight, feed en route, yardage, feed in yards, commission charge, fire insurance, and 5¢ per car collected for the National

Live Stock and Meat Board. This collection would not be made should the shipper so request. Such special charges as the cost of disinfecting pens and chutes might be made. There is also a regular charge for brand inspection. Truck-in cattle are unloaded at the truck-in division and employees of the commission men go to this division and drive the cattle to the pens. Truck-in cattle usually come in smaller lots and the expense of handling is somewhat greater than in the case of cattle coming in carload lots. After the truck-ins go into the pens of the commission firm they are handled in the same way as if they had come in by rail.

[fol. 228] Tagg Brothers and Moorhead buy mainly stockers and feeders and occasionally cattle wanted for short feed. The cattle buyer makes the rounds of the yards until he finds cattle which conform to the wants of the prospective buyer and for sale at the price the commission company has authorized him to pay or which he thinks he ought to pay. When the cattle are bought he watches the weighing, gathers the cattle up and puts them in a central place from which they are ordered out. Ordering out is putting in an order to the Stockyards Company, which is also an order to the railroad company, to furnish sufficient cars to ship the cattle to their destination. The order to ship out goes to the Stockyards Company, who in turn takes the matter up with the railroad. The cattle are loaded on the train by employees of the Stockyards Company. The commission firm makes no charge against the buyer for loading the cattle. After cattle are ordered out a bill of purchase is made out by the commission company and collection made for buying the cattle. On this bill of purchase there is the Commission charge, and prepaid freight provided there are any railroad fees at the station to which they are shipped. There might also be charges for testing, branding, dehorning, and dipping. The branding and dehorning are performed by private individuals.

The witness was formerly a hog salesman but he has not been actively engaged in selling for about ten years. The method of unloading hogs at the chutes is similar to that employed in the case of cattle. He estimates that about one-half of the hogs are delivered by the Stockyards Company at the pens of the commission men, and that the re-

maining 50 percent are driven from the chutes to the commission men's pens by employees of the commission men.

Those hogs arriving prior to 6 to 7 o'clock are usually driven to the pens by the employees of the Stockyards Company, while those arriving after that time are driven to the pens by the employees of the commission firms. There is no assignment of pens by the Stockyards Company to the commission men in the hog house. An agreement among the commission men enables each firm to retain the same pens from day to day.

When the hogs have been put in the pens they are graded, fed and watered, and then shown for sale, after which they are weighed and inspected for dockage. The inspector for dockage is employed by a joint executive committee consisting of two packer buyers, two members of the Livestock Exchange, and a fifth man who is selected by the other four. After hogs have been weighed the amount of dockage is marked on the ticket, which is carried to the salesman who marks thereon the selling price. These tickets are then taken to the office of the commission firm where [fol. 229] the total selling price is figured and the necessary charges deducted. From this information an account sales is made out and remittance sent to the shipper.

About 15 per cent of hog receipts and 4 per cent of cattle at Omaha are truck-ins. Hogs delivered at the truck-in chutes are sold in the hog truck-in division. Truck-in hogs are handled in smaller bunches than those arriving by rail.

Practically all of the sheep arriving at the stockyards are delivered at the sheep barns where they are fed and watered. In the barns pens are assigned to the various commission firms where the sheep are sorted. Ewes require more sorting than any other class of sheep. Cattle require the most sorting, hogs next and sheep least.

The weight of a carload of fat cattle is generally from 22,000 to 23,000 lbs. The weight of fat cattle varies from 900 to 1500 lbs. In the case of fat cattle it is possible to load beyond the minimum weight allowed by the railroad company, but the shippers as a rule do not load heavier than the minimum. In the case of range cattle the minimum weight is not usually loaded. Cattle weighing 1,300 lbs. or over run less than 20 to the car, and it is not unusual for cattle of this weight to be received at the Omaha market.

Occasionally fat cattle run as low as 14 to the car. The witness in his 26 years' experience had seen one car containing as few as 14 cattle and one car containing as many as 42 cattle. He estimated the average number per car as between 24 and 25. At certain times of the year his firm figured 70 hogs to a single deck car and at other times 65.

Few straight cars of calves are received at the Omaha market. Fifty to the single deck car is a fair average. It is possible to put 60 calves in a car. Very few cars longer than 36 feet arrive at Omaha. Occasionally fewer than 40 hogs to the single deck car are received. The average weight of a single deck car of hogs is around 16,500 lbs. A double deck car of hogs does not weigh twice this amount. Sheep arrive at the market mostly in double decks, old sheep running about 250 to the car and light lambs a little above 300.

Witness stated he did not think that cattle and calves in the same car would be considered a mixed car. Two separate classifications, however, are now in effect for cattle and calves. Formerly they were included in one classification. The methods of handling mixed cars and straight cars by the commission company are similar. The number of mixed cars is increasing in comparison with the total num- [fol. 230] ber received. Truck-in stock is not often mixed. In the case of mixed ownership sorting is done for quality and ownership. Mixed ownership cars require more trouble and expense than single ownership cars. There are more account sales and more tickets to be made out. Account sales are rendered to each owner upon request, and requests are made in about 90 per cent of cases.

Shippers are kept posted on the market. Inspection trips are made into the country, sometimes at the request of the shipper. Country sorting is done. Financial assistance in feeding operations is given. The Exchange tries to increase the buying power of the market. Assistance is given in weighing and inspecting stock at the scales. The Exchange helps to secure better railroad services. A contribution of 5¢ a car is collected for the National Live Stock and Meat Board. Assistance is given in the eradication of tuberculosis. Livestock arriving at the yards is insured. Mortgage and theft insurance is carried and paid for by the commission men themselves. This is of mutual benefit to

the shipper and to the commission men. Assistance is given in collecting 10¢ per car for brand inspection.

Market information is disseminated through personal and market letters, through the Journal Stockman, and through radio.

Cross-examination:

Witness is of the opinion that expenditure for the Journal Stockman sent to producers is a legitimate overhead expense. It takes more help to handle a given number of truck-in hogs than the same number in carload lots. Truck-in hogs are sold in truck-in division. Duplication of service is required. At certain seasons of the year animals have to be examined and marked "examined." This is an exceptional case, but when it occurs much time is required. Statement that few, if any, 40-foot cars are received reiterated. Tagg Brothers and Moorhead assist the Exchange in collecting damage claims from the railroads. A great deal of experience and skill is required to meet the changing conditions on the market. The firm's steer salesman has been selling steers for 18 years. It required 5 years for him to become a salesman. The hog salesman has been selling hogs for 26 years. The bull and calf salesman has been selling bulls and calves for 10 years. Two years are required to develop a yardman. A yard boy is a liability the first year. The butcher stock salesman has been selling this class of stock for 15 years. The bookkeeper has been with the firm about twelve years and had had about six years experience prior to that. The witness gives his whole time to the commission business and patronage is secured by personal efforts and letters. One of the best methods of securing business is through satisfied customers.

Redirect examination:

Yard boys frequently become salesmen. Tagg Brothers [fol. 231] and Moorhead have three cattle salesmen; two hog salesmen; one sheep salesman; five yard men; all of whom are experienced except one. The hog salesman in the truck-in division devotes all of his time to truck-in hogs. The salesman in the regular division does not sell in the truck-in division. This practice is fairly general in the yards. Three yard men are assigned to cattle, two to hogs,

and one to sheep, but they are shifted around when necessary.

The charge for collecting claims settled out of court is 15%, and where it is necessary to go to court it is 33⅓%. These charges are paid by the shippers.

The expense in connection with the radio service is borne by the Stockyards Company, the Exchange, and the Journal Stockman, and possibly by the traders. The market news is sent out over radio seven or eight times a day.

FRANK D. BIXBEY: Head hog buyer for Swift & Co. He has been in this line of work for forty years, twenty-eight of which have been spent with Swift & Company. This Company has four hog buyers at Omaha. There are six cattle and cow buyers and three sheep buyers for Swift. The hog buyers do not specialize in any particular class of hogs.

In the morning the head hog buyer gives an order to each of his assistants as to the number of hogs he is expected to buy. The buyers make the rounds of the yards and get the various prices asked by the commission men. The buyers keep in touch with the market, and it is the opinion of the witness that the number of orders has the greatest influence in determination of prices. Hogs are delivered to Swift and Company at the scales, weighed, and put in holding pens from which they are driven to the packing house. The opinion of the head hog buyer as to the trend of the market is generally based upon the morning's receipts. Approximately two double deck cars of hogs are bought daily in Omaha and shipped to Swift & Company's plants in other places. Three or four hundred are usually shipped. The buyers under the witness' direction have had twenty years, sixteen years, and eight years' experience respectively. It is his opinion that seven or eight years' experience is necessary in order to become a good hog buyer. The custom is to take young men from around the yard and gradually work them up.

Cross-examination:

Hog buyers who become commission men have not usually been successful. Buyers and sellers look at the same fea-

tures in making up their minds as to the trend of the market.

Redirect examination:

A man trained to look for a low price is not very well trained to look out for a high one. It takes as much ability [fol. 232] to sell as to buy hogs. Hog salesmen try to get the highest possible prices.

WILLIAM G. MELCHIORSEN, chief veterinarian for the Western Weighing and Inspection Bureau. This Bureau is an organization representing all the railroads doing business in the territory bounded on the north by Canada, on the south by the Gulf of Mexico, on the west by a line passing through Salt Lake City, and on the east by one passing through Chicago. This organization is maintained, among other things, for the purpose of checking weights and weight agreements, checking car conditions, livestock, etc. He has been in the employ of this organization for eight years. He supervises the inspection of livestock in and out, and has under his supervision three veterinarians and five lay inspectors. Dead animals are marked with identification tags and an autopsy is performed at the rendering plant. In the case of crippled animals they perform an ante-mortem inspection. The main purpose of this inspection is to see that the railroads do not have to pay damage claims when they are not responsible for the injury or death of the animal. Out-going cars are inspected to determine whether they are suitable for use. All claims for damages pass through the office of the inspector and he attaches a report of the conditions which he observed upon making his inspection. These claims are then returned to the claim office.

C. L. TALBOT is a brand inspector working directly under the Wyoming Stock Growers Association and indirectly for the Nebraska Stock Growers Association and the South Dakota Stock Growers Association.

The brand inspector has on file an abstract of State records of Nebraska; the brand book published by the

State of Wyoming; and an abstract of the brands recorded in South Dakota. When the brand on cattle does not correspond to the brand registered by the shipper, a tally sheet is made out containing the name and postoffice address of the rightful owner, provided the brand is known. This tally is given to the commission firm. If the commission firm finds that the cattle consigned to it do not belong to the shipper, the cattle are sold and remittance made by the commission man to the rightful owner. In case an animal comes into the yards bearing several brands the question of ownership, especially if the animal comes from the State of Wyoming, is referred to a board of the Wyoming Stock Growers Association.

The charge for brand inspection is 10¢ a head, and this applies to all cattle coming from the State of Wyoming, that part of South Dakota lying west of the Missouri River and certain other sections of that State, and to certain parts of Nebraska. This 10¢ per head paid by the shipper is [fol. 233] collected for the Livestock Exchange of South Omaha. Brand inspection is maintained for the general protection of cattle raisers in Western Nebraska, South Dakota, and Wyoming. It is also a great protection to the commission men in that it enables them to sell the livestock and remit the proceeds to the proper owner.

Cross-examination:

An employee of the commission firm accompanies the brand inspector when the inspection is made. If the tallies are taken by an employee of the commission firm when the brands are inspected, it is then possible to weigh the cattle and offer them for sale. If this were not done it would many times be impossible to offer for sale the cattle on the day on which they arrived in the yards. The clerical work in handling the tallies when the large Western runs come in is so great that the tallies are given out from 9 o'clock on the day the cattle are received up to 7 o'clock the next morning.

W. H. SHELLBERG, General Manager of the Union Stockyards, South Omaha. He has been in business for 25 or 26 years, during the last four of which he has been General

Manager of the yards. The Stockyards Company receives livestock from the connecting railroads on the transfer trucks, and it owns and operates the switching line which takes the livestock from transfer tracks to the unloading chutes. It unloads the livestock and receives compensation from the railroads.

Ninety-nine per cent of the stock arriving at the stockyards is consigned to commission firms doing business on the yards. Livestock consigned to a commission firm is yarded in the division assigned by the Stockyards Company to that commission firm. Assignment of pens to commission firms applies to cattle. In the hog division the pens occupied by the various commission firms are determined upon by the commission men themselves. In the case of sheep during the fall runs the Stockyards Company makes assignment in the sheep division but contracts that to one end of the barns during the lighter season.

The larger proportion of the livestock is driven by the stockyard employees to the pens of the commission men, and it is not handled again by the Stockyards Company until it is brought to the scales. The Stockyards Company feeds on orders of owners or commission firms. It furnishes the water but the actual watering is done by the commission men. Feed charges are collected by the Stockyards Company from the commission firms. Stock is brought from the commission men's pens to the scales and driven on the scales by the commission firms. Stockyard employees do the weighing and drive the stock off the scales and reyard it. After livestock leaves the scales it is driven into holding pens by the Stockyards Company, unless the purchaser is at the off end of the scales and receives it. If it is put into holding pens it is locked up and delivered [fol. 234] upon request of the purchaser. If the purchaser desires to ship out this livestock, it is loaded on to cars by the Stockyards Company. If it is sold to packers, the employees of the Stockyards Company deliver it to the packers driver at the pens in which it has been yarded.

The agencies other than commission firms which operate on the yards are traders, order buyers, and packers. The yard traders purchase stock that is not fit for slaughter and resell it to farmers for fattening. Stocker and feeder

traders are assigned by the Stockyards Company to certain yard pens. An order buyer is an agency who has received orders from firms or others away from the Omaha market. He goes upon the market and purchases the kind and quality of animals necessary to fill his orders and ships the stock out. An order buyer is considered a fat stock buyer, but he may buy other kinds also. The packers buy stock fit for slaughter.

The bulk of the truck-in business originates in a territory within 40 or 50 miles of Omaha. About 12 per cent of the hog receipts at the yards are drive-ins, and a smaller percentage in the case of cattle. The drive-in sheep come on foot from the nearby feeding lots. Drive-in cattle are received at the truck-in division, placed in receiving pens there, and delivered to the commission firm. Drive-in hogs are sold in the truck-in division. Sheep received at the truck-in division are delivered to commission firms at the unloading chutes and taken into the sheep barns.

The Stockyards Company has a railroad department which does switching for the various industries located on the tracks belonging to the Stockyards Company. Livestock may be dipped and viccinated. The Stockyards Company furnishes facilities for vaccinating hogs but does not perform the service. It does the actual dipping of livestock. It also furnishes office space for commission firms and traders. The Stockyards Company does some advertising and has a number of solicitors on the road at all times. The mediums used for advertising are newspapers and radio.

Traders generally handle only one species. The witness defines a yard trader as follows: "Well, they are all regular yard traders if they are operating here."

The Stockyards Company keeps all records concerning the origin, destination, consignee, and consignor of livestock.

From page 119 to 140 of the record the annual reports of the Stockyards Company for the years 1921 to 1925, inclusive, were introduced. These reports constitute the [fol. 235] following Government exhibits:

Ex. 4A—Offered at p. 116, received at p. 119, 38th Annual Report of Omaha Stockyards Company, 1921.
" 4B—Offered at p. 119, received at p. 121, 37th Annual Report of Omaha Stockyards Company, 1920.

Ex. 4C—Offered at p. 121, recieved at p. 123, 39th Annual Report of Omaha Stockyards Company, 1922.
" 4D—Offered at p. 123, received at p. 127, 40th Annual Report of Omaha Stockyards Company, 1923.
" 4E—Offered at p. 135, received at p. 139, 41st Annual Report of Omaha Stockyards Company, 1924.
" 4F—Offered at p. 139, received at p. 140, 42nd Annual Report of Omaha Stockyards Company, 1925.

The information in each of the annual reports of the Stockyards Company relating to the disposition of livestock is secured from the commission firms, either orally or on small slips of waste paper, or on the copy of the way-bill, and later transferred to the records of the Stockyards Company.

Cross-examination:

There will be an increase in rent to the commission firms when the new Exchange Building is completed and occupied. This rent is assessed on a per square foot basis. The witness estimates that the livestock receipts at the Omaha market in 1926 will approximate those of 1925. From January 18th to February 13th, 1926, the records of the Stockyards Company show that the Stockyards Company yarded all the sheep received in carload lots. Commission firms yarded 12.7% of the cattle and 29% of the hogs. It costs the Stockyards Company more to yard livestock at a distance from the chutes than to yard them nearby. The witness denied that by reason of location some of the commission firms are in a better position than others to do their business with less expense.

W. H. SCHELLBERG, recalled: Exhibit 66 is a blue print of the stockyard property but does not show the outlying land not now used by the Stockyards Company. A red pencil mark was drawn, locating the land devoted to stockyard purposes.

Exhibits 67-A, 67-B and 67-C are respectively statements of receipts and disposition of livestock for the months of January, February and March, 1926.

Crippled cattle and sheep arriving at the unloading chutes are generally disposed of by the commission firms to purchasers at the chutes, while crippled hogs are concentrated at given points by the Stockyards Company. Crippled animals are purchased by slaughterers. Animals so badly [fol. 236] crippled as not to be suitable for human food are disposed of for fertilizer and tankage purposes. Animals crippled in the stockyards are disposed of in the same manner as those crippled before arrival. Dead animals are disposed of by the commission men to the rendering works. Animals dying in the yards are disposed of in the same manner as those arriving dead.

Robert Graham: A producer of livestock residing at Alliance, Nebraska. He markets his cattle largely as yearlings and disposes of his aged cattle as beef cattle. His steers are classed as stockers and feeders. Occasionally some of the yearling heifers sell as fat cattle. Of the number produced by him, about 25% are marketed as fat cattle. He markets about 25 cars of stockers and feeders a year and from 5 to 15 cars of fat cattle. Previous to 1925, 75% of his cattle were marketed at Omaha. In 1925 his stocker and feeder steers were sold at the ranch and went to a feeder at Lafayette, Indiana. One of the reasons assigned for selling these stockers and feeders direct was that he felt that it meant more money to sell to this buyer than to take a chance on the market. He testified, however, that there were days when he believed his cattle would have sold for as much on the market as he received for them at the ranch, but on the whole he was of the opinion that he made a better sale by selling on the ranch than if he had taken the chances on the market.

Mr. Graham is President of the Nebraska Stock Growers Association and has been for ten or twelve years, and is informed as to the financial condition of the stock raisers in Nebraska. He states that the livestock industry in Nebraska for a period of five years has been in a very bad condition. In 1925 prices were somewhat better. Practically all of the stockmen operated at a loss up to 1925. There were exceptions, but the major portion of Nebraska

cattle men in the western part of the state operated at a loss.

The witness testified that he knew the Omaha Live Stock Exchange Tariff No. 2 had been filed with the Secretary of Agriculture and that he was in a measure familiar with it. He gave it as his opinion and the opinion of the men whom he represents that they consider the rates uncalled for and that it does not seem fair to him and to others in the cattle business that those who handle the cattle should ask for an increase in commissions when those who produce the cattle have been producing at a loss. He refers to the rate of $16.00 per carload of cattle at the rate proposed by the representatives of the producers at a meeting held by them prior to the arbitrator's award. To this rate the commission men did not agree. The witness is of the opinion that the rates of the present time (Tariff No. 1) "are [fol. 237] sufficiently high and we don't like to see any increase at this time."

Cross-examination:

The price of the cattle sold to the feeder at Lafayette, Ind., was agreed upon several months previous to delivery. The probable price on the public markets did not influence the contract price. In such transactions it is the opinion of the witness that generally the price on the public market does have weight. He considers the public market necessary, and that lessened service and effort on the part of commission men would result in a disadvantage to the producer. The witness believes that the commission merchant is entitled to a fair return for his labor, but that a time of general depression in the livestock business is not appropriate for raising rates. He believes that commission rates should be high enough to pay legitimate expenses, but that commission merchants incur unnecessary expenses which the business does not justify. For instance, cattle producers for the last five years have not had money enough to keep their ranches up, to keep fences up and to pay taxes, yet commission merchants of South Omaha find it convenient to move into new quarters here that are the pride of the city and to the market in general.

The witness feels that the small addition asked for would not be particularly detrimental, but that it will be an addi-

tional overhead expense to the ranchman and that it is just one of the straws that is breaking the camel's back. He added that his position as president of his organization would not influence him to object to any raises. He stated further that at a time of general prosperity the small increase asked for might not be objected to strenuously, but at a time when the cattle producers are just beginning to get their heads above water the cattle men do not like to have these small pebbles thrown at them, though they are not big rocks. From his own personal standpoint the increase would not amount to a great deal, and he has little objection to it himself if he gets good service. He thinks the same feeling might be found in some of the members of his organization. At the time the conference was held in 1922 the number of commission firms had increased materially on this market. Evidently there must be some money in the business or these men would not flock to it. Not many men at this time are looking for ranches and starting in the cattle business. Rats usually desert a sinking ship. That is what has been happening in the cattle business. He is of the opinion that if a number of firms were eliminated the remaining ones would have a greater amount of business and hence could carry on their business at a smaller expense. The meritorious firms would still retain their customers and do business. His testimony referred to Western cattlemen upon whom the increase in the new tariff mainly falls. His opinion as to rates is based upon [fol. 238] information received and discussed at the meetings heretofore referred to in 1922. His information relates to conditions in the industry looked at from the standpoint of the grower. Since 1922 the condition of the growers has been worse. There was some improvement in 1925, but at the present time the condition is substantially as it was in 1925. He is of the opinion that the commission men do all they can to assist him personally in his capacity as president of his organization.

Redirect examination:

The witness believes that commission rates and charges should be regulated by law. He would not like to see anyone put out of business, but it seems to him if a man goes

into a business that is not profitable, expecting to make a living off of some one who is producing the commodity he handles at a loss, it would not hurt seriously if he had to quit the business. A lesser number of firms on the market would not injure the character of the service rendered to the shippers but improve it. He bases his conclusion upon information to the effect that 50% of the business of the Live Stock Exchange at Omaha is performed by about 15 out of the 68 firms. He stated that his information may be wrong. He had no information as to the proposed increase in rates until a week previous to his testimony given on March 26, 1926.

S. P. DELATOUR: Livestock producer and banker, Lewellen, Nebraska. He has resided there 41 years and has been engaged in the livestock business 46 years. For the last 14 years he has been engaged in handling steers. He buys the best yearlings and two year olds he can find in the Panhandle of Texas, takes them to the ranch and runs them there until disposed of, sometimes the following year and sometimes the second year following. During 1925 he disposed of most of his cattle direct. Some, however, were shipped to Omaha and sold on the public market. In 1925 he sold 12 loads of fat cattle, the last four loads being disposed of the day before he testified and the others within 30 days previous. He gave the following figures on the cost of carrying feeder cattle for one year:

Labor per head	$2.50
Cost of hay, taxes on stables and loss of 2%	6.75
Oil cake	2.75
7% interest on cost of steers and investment in land	9.31
Taxes on land	1.00
Total	$22.31

The original cost of cattle in Texas was $51.00 per head. About 250 of the cattle were sold on the Omaha market The cost shown above apply to these cattle.

[fol. 239] The prices received for the 12 loads sold in Omaha were as follows:

5 loads	$8.75	per hundred lbs.
3 "	8.65	" " "
4 "	8.85	" " "

The four loads referred to above were marketed in Omaha the day before the witness testified. On these he sustained a loss. On the 12 loads he made a profit of $150 above all expenses.

The witness stated that he is fairly well acquainted with the cattle situation all over the Western country, and that 95% of the producers of ranch cattle are heavily in debt. He estimates that the producers of ranch cattle from 1920 to 1924, inclusive, had about broke even, and that conditions in 1925 were somewhat better.

Of the cattle he shipped all except one load were accounted to him as having been sold straight. In the case of one load there was mixed ownership.

He is opposed to rate increase as set forth in Schedule No. 2. His opinion is based upon experience which he has had with commission men in past years. Some ten or twelve years ago charges were $10 or $12 a car. The service rendered by the commission men at that time was as good as that being rendered now. Commission men do business now under different conditions from those that prevailed at that time. He considers the arbitrator's schedule high enough and is satisfied with it. Producers objected to it at the time it was put into effect.

As a general rule he believes that the majority of stockmen have broken even in recent years. A good many of them have gone out of business. He believes the stockmen of Nebraska generally are fairly well satisfied with the present commission rates. They might as well be satisfied with them because they can not change them. He did not know until Friday that there was an application for an increase. (He testified on March 26, 1926). He had talked with several of the commission men and they did not even know of it.

Cross-examination:

The witness testified that he is also in the banking business. His bank raises and lowers interest according to the prosperity of the producer. It has been lowered from ten to eight to— per cent. His bank makes no discrimination in interest charges.

J. L. JORDAN is a cattle rancher residing at Cheyenne, Wyoming. He breeds cattle and markets his steers as [fol. 240] three-year-olds and his cows all the way from three to five and six. His steers are almost entirely feeders. He markets all his cattle at Omaha. He markets ten or twelve carloads of cattle a year, about one-half of which are feeder steers, about one-third cows, and the rest beef cows or feeder cows.

The witness is President of the Wyoming Stock Growers Association and the American National Stock Growers Association. He estimates that 75% of the cattle people of Wyoming are members of the Wyoming Association. The American National Livestock Association is an association of associations. The witness is a member of the executive committee of the American National Livestock Association.

The witness estimates that 80% of the livestock producers of Wyoming are bankrupt. The depression began in the winter of 1920 and continued up to the fall of 1925 when a slight improvement occurred. He stated that he discussed the arbitrator's schedule with stock growers many times at the meetings of the association. In 1922 he had a conference with the officers of the Exchange for the purpose of reducing commissions. A tentative agreement was reached relating particularly to commissions on cattle. The meeting adjourned to meet again in a short time. At the second meeting nothing was accomplished. Subsequently there was a great deal of discussion among the members of the association relative to the commission charges. Rates were reduced slightly. The members were not satisfied at that time with the rate that is going now, and have not been. They thought that the rate was a little high but they have made no particular fight against it. The fact that the Ex-

change men themselves, the commission men, and the officers of the Exchange virtually agreed to enter into an agreement with the members of the association for a reduction and that the reduction was not made was disappointing.

Cross-examination:

Witness stated that the services of the commission men to him personally are not worth what the commission men charge. He bases his opinion upon the 1922 schedule and upon the service that the commission men rendered ten or twelve years ago. He stated that he did not ship to the Farmers' Cooperative Association and that he did not believe a single man from his state is shipping to it. Asked why members of the association ship to the old line firms, he gave as his reason friendship and custom. He expressed it as his opinion that the people of his association felt that they were paying enough at the Omaha market for the serivces rendered. He thinks commission rates are higher in proportion than the charges made by other people. He believes the commission men are endeavoring to charge more than their service demands and requires. There has [fol. 241] been little, if any, improvement in the services rendered by the commission people. Service at present cannot be rendered at the same price at which it was rendered in the past and he has no desire to see commission rates as low as they formerly were. He thinks that it is the opinion of his people, and it is his opinion, that there are too many commission firms and that fewer firms would render better service, provided the number was not too small.

A. F. Stryker, Secretary-Traffic Manager of the Omaha Live Stock Exchange, Omaha, Nebraska. The Omaha Live Stock Exchange is a voluntary association of commission men, doing business on the Omaha market. In addition there are a few members of the Exchange who do not conduct a commission business, such as the manager of the stockyards, the president of the Stockyards National Bank, and a few scattered memberships. The witness does not recall any shippers who are now members of the Exchange.

The Omaha Live Stock Exchange is a non-profitable organization, maintained to promote uniformity in customs and usages of members; to inculcate justice and equity in trade; to enforce correct and high moral principles in business transactions; to inspire confidence in the methods and integrity of its members; to facilitate speedy adjustments in business; to collect and disseminate commercial and economic information. Exhibits 5a, 5b and 5c, "Rules and By-Laws of the Omaha Live Stock Exchange, issued March 15, 1924," constitute all the present rules of the Exchange. The Exchange employs and pays the salary of seven or eight men in the cattle yards, one at each of the cattle scales whose duty it is to assist in weighing cattle. These men inform the commission firms when their turn to weigh is about to come. This enables the livestock to remain in the pens and continue to eat, whereas formerly they might have to stand in the alleys without food and water. One of the principal shippers to the Omaha market said that this service saved the shippers more than all the commission charges combined. This service costs about $14,000 a year. A weigh-back inspector whose duty it is to determine the merchantability of feeder cattle is maintained in the yards. The men located at the cattle scale perform ante-mortem iuspection to determine the cattle which sell subject.

In the hog yards five hog inspectors are maintained whose duty it is to dock hogs as they go over the scale. These men work under the supervision of a joint executive committee, composed half and half of the buying and selling interest. Their salaries are paid from a 20¢ per car assessment levied against the shippers. The Exchange insures livestock arriving at the stockyards against fire and tornado. The insurance policy is a blanket policy, and the fire insurance premium, 15¢ per car, is charged to the [fol. 242] shipper on his account sale; the tornado insurance is paid by the Exchange. A charge of 10¢ per hundred on cattle is levied against traders in order to help the Exchange carry expenses and tornado insurance. There is a 1¢ per head insurance charge on truck-ins up to 15 head; or more than 15 head the carload rates apply.

The Exchange was organized in January, 1889. The exchanges of the country were organized primarily to protect the country shipper against excessive hog dockage.

Prior to the organization of the exchange it was customary to dock hogs cheap if they were bought high. The Exchange has never considered the arbitrator's award as a part of its rules. The award was accepted under protest. The schedule in effect prior to the arbitrator's award is one of the rules of the Exchange. The schedule No. 2, which went into effect the day following the testimony of the witness, constitutes one of the rules of the Exchange. Schedule No. 2 does not apply to the Farmers Union or to the Independent Live Stock Commission Company. The rates and charges that constitute one of the rules of the Live Stock Exchange are used by all members of the Exchange. The Exchange does not allow its members to file different and independent schedules. To do so would violate the rules of the Exchange.

The Exchange levies against the commission men 10¢ per car to raise funds for carrying on its work. This item is not charged back to the shipper, but it is an item of expense charged against the commission business. If either buyer or seller is dissatisfied with the dockage on hogs, an arbitrator may be called by the one who is dissatisfied. The fee for such a call is $1.00 paid into the Exchange and paid out by the Exchange to the one called. Appeal may be taken from the decision of the arbitrator to the Board of Review. The cost of the appeal is $2.00 paid into the Exchange and paid out by the Exchange to the reviewers called.

A clearing house is maintained by the commission men, through which bills for livestock sold and checks in payment are sent. These bills are stamped so as to show the time at which they are received. Bills reaching the clearing house before two o'clock must be paid the same day. Those reaching the clearing house after two o'clock must be paid before ten o'clock the next morning. This arrangement speeds up collections and enables the commission men to collect from the buyer of livestock and remit promptly to the country. The expenses of the clearing house are met through a box rent, and enter into the expenses of the commission men. The office work of brand inspection is performed by the Exchange. An assessment of ten cents per head for inspecting all branded cattle coming from designated portions of Wyoming, Nebraska and

South Dakota is levied against the commission man selling [fol. 243] the cattle, who charges it on the account sales. The funds so collected by the Exchange are remitted to the proper organization. The service of brand inspection is not solely for the shippers' benefit. It is advantageous also to the commission men in that it prevents them from incurring a liability by rendering the proceeds to the wrong owner.

The annual assessment of the Exchange on its members is $10.00 per year. The Live Stock Exchange interests itself in freight rates. The witness cites an example in which the Exchange prevented a railroad tariff raising the rates on feeder cattle to a parity with fat cattle becoming effective. Representatives of the exchanges participate in livestock rate cases heard before the Interestate Commerce Commission. The exchanges have always been active in protecting the shippers to the Omaha market as to regulations formulated by the Bureau of Animal Industry to see that no unfair or unjust regulations are applied to the movement of livestock. The members of the Exchange are benefited, as the health of livestock is protected and as different regulations which might be detrimental are prevented from becoming effective. The witness estimates that from one-half to two-thirds of the time of a secretary's office in Omaha is used in the protection of the interest of the shipper. The Exchange maintains a claim bureau which has collected more than three-fourths of a million dollars in losses and damaged claims. The Exchange charges 15% for collecting these claims if settled out of court and 33-1/3% if collected through suit. Of the 33-1/3%, 25% goes to the attorney and 8-1/3% goes to the Exchange. The railroads state that not half of the claims were collected prior to the inauguration of the claim department. It is the purpose of the Exchange that the claim department make no money.

Cross-examination:

The witness states that Interstate Commerce Commission Dockets Nos. 11, 699 and 11,700, dealing with mixed cars, save the shipper from $12.00 to $15.00 a car. This case was participated in by the Omaha Live Stock Exchange and the burden was borne by the Omaha com-

mission men. The National Live Stock and Meat Board Associations were arranged and put into effect at the request of shippers. The proposal of the packers was that all cows on the market must be sold subject to post-mortem examination. The Exchange resisted this proposal and won out. It was settled that when a packer bought a cow and the cow passed across the scale the animal belonged to the packer, unless an odd animal now and then was tagged by the Bureau of Animal Industry. The Exchange interested itself in tuberculosis eradication.

[fol. 244] The office rent in the old building was $3,806.25 per month. In the new building it will be $7,735.00, an increase of $3,928.75 per month. This is equivalent to $47,145.00 per year. In addition there will be locker rent from $5 to $15 per month. The yearly locker rental will be about $7,200.00 per year. In all there will be an increase in rentals of $54,345.00.

Bruce McCullough: Resides in Omaha, Nebraska, and is editor of the Journal Stockman, a market paper published at the South Omaha Stockyards. The purpose of this paper is primarily to furnish the conditions of the market. The daily price quotations, as published, are based upon actual sales reported by the commission men. In addition to furnishing market information the Journal Stockman gives general farm information and general news. The mailing list of the paper consists of about 25,000 names, most of whom are farmers and stockmen. The commission men carry no advertisements in the Journal Stockman. It is the custom of the commission men to order the paper sent to their customers. If one commission firm orders a paper sent to a subscriber who is already receiving it, the Journal Stockman so notifies the commission firm making the request. There are no duplications.

Cross-examination:

The same information sent to farmers and stockmen would be much more expensive if some other means of dissemination were employed. It is essential to the proper conduct of the commission firm's business to inform the

shippers of market conditions by sending them the Journal Stockman. The Journal Stockman participates with the Exchange and the Stockyards Company in broadcasting market news.

Redirect examination:

The subscription price of the Journal Stockman is $5.00 a year. When it is sent to a farmer or stockman by a commission man, the commission man is charged $5.00 less an Agent's discount of 20 or 25%.

J. H. BULLA: Resides in Omaha, Nebraska, and is a yard trader on the Omaha Stockyards and has been trading on the Omaha Stockyards for twenty-four years. He handles stocker and feeder cattle exclusively. There are 125 or perhaps a few more traders operating on the market at South Omaha. All traders operating on the market, except about twenty, belong to the Traders Livestock Exchange of, which the witness is president. Twenty-four traders who are members of the Traders Livestock Exchange belong also to the Livestock Exchange of the commission men. The purpose of the Livestock Traders Exchange is to promote honest trading, to establish rules which will promote the interest of the commission men and traders. Traders operate in a certain division of the yards. Most traders specialize, some dealing in steers, some in feeder cows, some [fol. 245] in calves, and a few buy odds and ends that are left over in the afternoon. Traders buy exclusively from commission men. Traders generally do not buy on order. Traders deal in that class of cattle which is not fat, yearlings, feeder twos, and feeder threes. Stock steers come largely from the west. A few arrive from Iowa. Omaha is about second to the largest feeder market. Other buyers and men from the country buy their supplies either from the commission men or from the trader. Traders buy strings of cattle, maybe a dozen bunches, from the commission firms. These cattle are then thrown together by the trader and sorted into loads and offered for sale. Buyers may select the cattle that they want from the supplies of the traders. The trader holds the cattle until sold. This

the commission men cannot do. The identity of the cattle has to be maintained until the sale is made. The trader buys everything from one animal to many loads from the commission man. The trader is indifferent as to whether the cattle are sorted before he buys them. Most of the cattle that traders buy have not been sorted.

Witness is under the impression that the purpose of the investigation is to equalize Omaha and Sioux City commission rates.

(Discussion as to whether the investigation relates to reasonableness of the proposed increase, or reasonableness of the commission charges at Omaha generally. The Examiner ruled that the inquiry covered in its scope the reasonableness and lawfulness of the rates in Tariff No. 2, whether concerning only increases or not.)

The witness states that he does not deal with all firms on the market but he aims to.

Witness sees no particular change in the method of buying and selling. There has been no particular change in the practice of stocker cattle as compared with fat cattle coming to the Omaha market. The customers of the traders are order buyers and country men coming to the Omaha market. In case there happens to be a number of fat cattle among stockers and feeders bought, these are sorted out by traders and sometimes planted with commission men for sale.

Cross-examination:

The testimony of the witness refers solely to stocker and feeder cattle, and is given in the light of what he, himself, does and in the light of what other traders do. Cattle arriving at the Omaha market are not purchased in lots as large as ten years ago. They require more sorting now than formerly. The witness does not know what a livestock salesman is worth. Various salaries are paid according to competency, mostly incompetency. Farmers can and do come into the Omaha market and buy livestock from traders or commission men.

Redirect examination:

There is not a great deal of difference in the amount of sorting required in 1925 and that required in 1924. Stocker

[fol. 246] yearling steers weigh about 600 pounds; stocker twos, 700 to 900 pounds, according to flesh. Thirty to forty stocker yearlings constitute a carload. Twenty-five 900-lb. steers will constitute a car-load.

Recross-examination:

The opinion of the witness as to the reasonableness of the rate schedule is that the commission man would not make an unreasonable charge. He hesitates to think that the commission man would make an unreasonable charge. He does not say that the commission man would not do so. When a regular yard trader plants cattle with a commission man for sale, commissions are one half the regular rates. (See section 6 of the schedule.) Regular yard traders are traders who belong to both exchanges. Traders who do not belong to the livestock exchange do business through some trader who is a member of the livestock exchange, and thus enjoys the one half commission charge. The service performed by the commission man for the trader is the same as that performed for the shipper.

R. B. Daugherty: In the livestock commission business on the Omaha market; member of the partnership of Ingwersen & Daugherty, organized September 1, 1924; a cattle salesman of five or six years experience. His firm handles hogs and cattle. Sheep receipts are turned over to another firm for selling. The bookkeeper of the firm applies the tariff to sales. The dividing line between cattle and calves in applying the schedule of rates is 425 lbs.

Witness was not familiar with the increases proposed in Tariff No. 2. He is of the opinion that the increase in rates is necessary because of increased cost of labor and the service that commission men have to give. It is his belief that the increase in rates was made by a committee appointed by the Exchange. He was not on the committee and did not consult with it. He did not vote for the increase and does not know that the increase was voted on. He has been in the country a good part of the year 1926. He first knew of the increase in rates the week previous to the date

on which he testified (April 6, 1926); that is, when they went into effect. By increased service he means the necessity of having more help to look after shipments.

Shippers are dissatisfied if the stock is not carried to the pens immediately, and they are harder to please than formerly. For several months the cattle market and been bad. The feeders have made no money and are therefore displeased and disappointed. Additional help is required because of the increase in truck in stock. His firm has small truck in shipments. It solicits 60 days a year. Soliciting is [fol. 247] necessary because producers are constantly going out of business and unless the commission firm goes into the country to get new ones the firm's business falls off. Most of the advertising done by this firm is for the benefit of customers. Market letters are sent out.

The witness was unable to make a very good living under the old schedule. This was due to both rates and volume. His firm sells quite a number of cattle to traders when the range cattle come in in the fall. The profit of the trader is due to the increased weight after rest, feed and water, and to increased price. The traders sell some cattle on the day they are purchased. The witness sells cattle for traders. The price at which the cattle are to be sold is sometimes set by the trader and sometimes by the commission man. If the trader sets the price too high and the cattle do not sell, they are removed from the pens of the commission man.

During a part of 1925 his firm had all the business it could handle, but at other times did not have as much as it could have handled efficiently. The business is heaviest in the fall due to the run of range cattle. The firm sells cattle for traders who are Exchange members. Most of the traders are members of the Exchange. He stated that it would be difficult for him to say how many cattle he could have handled on the day he testified. The market was bad and it would not have been possible to please customers. It might have been necessary to ship the cattle to another market.

Cross-examination:

The firm incurred no expenses in 1925 which could be considered extravagant. It handled the business which it

received to the best of its ability. The purpose of solicitation is to increase business as much as possible. The reason the firm did not sell more cattle was that it did not get the consignments.

The witness reaffirms his belief that rates should be increased. He feels that the services to the shipper are worth the amount charged, and that the shipper could not sell livestock to the best advantage on the Omaha market. He feels that he is entitled to make more out of his business than he is earning. He has been in the livestock business for 18 years. It is necessary to maintain and keep help on hand so that if a shipper happens to decide to ship to this firm the business can be handled. Employees have to be kept whether they are working or not. The witness does not know of any method of bringing about an evenly distributed flow of livestock.

[fol. 248] Redirect examination:

The livestock shipper must employ a commission man in order to get the highest price for his stock. The witness would not take advantage of this fact to make high commission charges. He does not know of any reason why the increase should be on cattle rather than on sheep. He seldom meets representatives of other firms while soliciting in the country. The firm sold 4½ cars of cattle on the day previous to his testimony. One car contained both cattle and hogs. It sold one truck in animal and 3½ cars of hogs. There is no yardstick by which the proper expenditure for advertising can be determined. It depends upon business judgment, based upon experience.

Chester P. Dudley: Council Bluffs, Iowa; in the livestock business in South Omaha, Nebraska; member of the firm of Allen Dudley & Co. This firm handles cattle and hogs principally and a few sheep. The sheep consigned to this firm are sold by another firm. His firm employs three cattle salesmen and three hog salesmen. It handled about 100 truck-in hogs on the day he testified, but no carloads. It also had some truck-in cattle but no carloads. During the week the firm had about four carloads of hogs,

some truck-in hogs, and about four loads of cattle. (April 6, 1926.) Receipts during the week were a little lighter than usual. Cattle receipts heaviest in the fall, and hog receipts in the winter and spring. The hog runs at South Omaha are less than normal for this time of year. Truck consignments of this firm come in plural ownership quite often.

This firm has a hog salesman in the truck-in division and he does not sell hogs in the regular hog house. He would do so in an emergency. At some seasons of the year there are practically two hog markets, one in the car division and the other in the truck in division. The same buyers do not usually frequent the truck-in division and the car division the same day. Some packers do not even have buyers in the truck-in division. Other packers have buyers in both divisions. It happens occasionally that the equivalent of a carload arrives by truck on one day.

On the Saturday previous to his testimony he found that the increase in rates brought in an average of 50¢ a car more on 15 loads of livestock. He could not state what percentage of the 15 loads was hogs. He talked over the increase in rates with individual members of the committee, but not with the committee as a whole. He did not furnish the committee with any information with regard to his business. He does not recall who was on the committee. He does not remember when he learned of the proposed increase. He believes that the increase is due. He bases his belief on the fact that when the schedule was re- [fol. 249] duced a number of years ago the commission men were given to understand that if it was cut too much that it would be increased to meet the demands. There has been an increase in the cost of operation. A man is entitled to a fair living out of any business. He feels the need of an increase in rates in his own business. He feels that all the markets give similar services and should make equal charges for like service. Even if the rates at all markets were the same, the witness thinks that the rates at Omaha should be raised. He cannot state specifically the date at which he arrived at this conclusion.

His firm handles an average amount of plural shipments. Plural ownership hogs are sorted for ownership, sold and weighed separately. Plural ownerships are sold straight only when the owners are present and agreed to this method

of handling. Two members of his firm spend some time in the country. When out soliciting either may be called by a livestock shipper to ascertain whether there is a demand on the market for the class of livestock which he has. The solicitor does not advise the livestock shipper as to the time to ship to market, but gives him the market conditions and the approximate probable price. It frequently happens that livestock so inspected are shipped to some other commission firm or shipped out to some other market or sold at home.

The firm sends out market letters and the market papers to prospective customers upon request. Upon the expiration of the subscription period the paper is discontinued.

The witness has been connected with the firm for 12 years. He has worked during his summer vacations and for the last four years has been a member of this firm. He has sold hogs since 1912. He made a living from the operation of his firm last year. The present organization has been in existence since sometime in the 90's. His brother has been in the business longer than he, and his father was in business ahead of him. The size of the firm has remained approximately constant. The profitableness of a business is dependent upon the schedule of rates and the volume of business done. The firm with its present organization handled more business efficiently two years ago than in 1925.

Cross-examination:

The witness attended High School in Council Bluffs, Iowa, and was at Dartmouth College 3½ years. His brother went to the University of Missouri and took a course in agriculture and animal husbandry. The witness has grown up in the commission business and has been taught that the interest of his patrons was the chief consid-
[fol. 250] eration in the commission business. The slight increase for the purpose of continuing a business which has been in existence since the 90's will not result in an exorbitant rate or in the shipper doing something which he should not do. He thinks that an accurate description of the commission business can not be put into the record. He believes that commission men are entitled to a living

wage and that what that wage is should be determined largely by the one who makes the rate. He states that he would go out of business before levying exorbitant charges.

Redirect examination:

Witness is unable to define an exorbitant rate. He thinks that a rate would be fair to the farmer and to the commission man if it allowed the latter to make a living and a small amount of savings. By the welfare of the shipper the witness has in mind keeping him posted on market conditions, sending out market letters and the stock paper and, if necessary, visiting the farmer and giving advice, reasonable service at the terminal market, and remitting to the shipper. He defines efficient service as careful handling of livestock upon arrival and securing the best price obtainable. Prices are arrived at by the seller's personal judgment and by bids received. The firm does not do a loan business or country buying. He considers that a farmer conducting his business as efficiently as the commission man conducts his would be considered an efficient farmer. Business conditions are different on the farm from what they are in the commission business.

He considers that volume is not in any way related ot the rates to be charged, and that the rates s' ould be fixed so as to yield a living wage. He defines a living wage as the cost of maintenance for traveling, traveling expenses, and other interests of life.

Recross-examination:

The commission business can be divided into three divisions: (1) requires a great deal of experience and skill; (2) requires lesser degree of aptitude and skill; and (3) requires skill in the judicious use of a limited amount of capital. Selling belongs to the first one of these divisions, and yarding and driving cattle belong to the second. He does not know of any method of evaluating the services of a salesman. One yardman may be valuable to one firm and worthless to another. In employing the salesman the firm takes into consideration natural intelligence, aptitude for the commission business, skill, experience, personality, and the amount of business which he can command. In going

to one firm a salesman might be able to take this business with him, and in going to another might not be able to do so. A sufficient sum of money must result from the business to hire employees in competition with other commis- [fol. 251] sion firms and the outside industrial world. He does not feel that he could reduce the salary of any of his employees without disheartening them and probably driving them to other firms or breeding in them a disposition which would be detrimental to patrons.

He does not think it possible to differentiate as to the reasonableness between one rate and another rate 30¢ higher or low. His patrons will not be dissatisfied on account of the increase. The reason shippers send their livestock to a particular firm is because they think that firm can give them better service than other commission firms. We know of no way to regulate shipments so that arrivals will be fairly constant from day to day and from week to week throughout the year. He does not believe that there is any merit in assuming that a commission house has to receive a certain number of cars per year in order to be efficient.

Redirect examination:

The qualities needful in a good salesman are the same in all commission firms. The qualities necessary for success are not peculiar to the commission business.

Frank W. Howe: In the livestock commission business on the Omaha market. He has been engaged in the livestock business for 23 years, during five years of which he was engaged in ranching. He has been in business for himself since the first of this year. He has been a yardman and a cattle salesman. He employs one hog salesman. Sheep consignments are turned over to another commission man and handled on a split commission basis. He sells to all classes of buyers, including packing houses, yard traders and country and order buyers. Some sales of feeders are made direct to the farmer. Under some market conditions it is more difficult to sell to one class of buyers than to others. Under other conditions the reverse may be

true. His firm buys cattle from the commission men and traders. Buyers cannot tell whether hogs are seconds or not. They can cattle. It is more difficult to sell cattle seconds than firsts.

His firm sells both truck-in hogs and truck-in cattle. It is somewhat more difficult and expensive to sell truck-in stock than rail stock due to the small number which have to be driven and also to the fact that cattle have to be driven from the truck-in pens to the regular pens. The bookkeeper of this firm also acts occasionally as hog salesman. His firm handles few calves.

He has looked over Livestock Exchange Tariff No. 2. He had no voice in making the schedule. He does not know who the committee was who planned the schedule and was not present when it was voted on. He thinks that the aver- [fol. 252] age shipper could not understand the schedule sufficiently to know what the proper commission charges should be on his shipment. His firm has had no trouble in applying the new schedule. He did have difficulty in applying the old schedule at times and his bookkeeper would have to consult others who had more experience than he. The number of fat cattle contained in a car is between twenty and thirty, occasionally less than twenty. Anything less than sixteen to a car would be considered a freak shipment. In a straight car one animal more or less makes no difference in the handling and selling. There is no more difficulty in handling and selling. There is no more difficulty in handling one straight car of cattle than another.

An increased number of drafts adds to the difficulty and expense in selling. Truck loads are picked up, a few at a time, and 8 or 10 are sent to market as they are ready. The necessity for increasing rates is that none of the commission firms have been making money. This statement is not based upon his own knowledge. The reason why some firms have not been making money is because they have not been getting enough business. They have to have the same amount of men to handle a small business as they do a big business, that is, up to a certain point. The reason some firms fail to get the business is because other firms are getting it. When one firm loses the other gains, providing the whole volume does not decrease. It costs more to handle a load of cattle than a load of sheep or a load of

hogs. A straight load of cattle could be handled just about as easily as a straight load of hogs. It costs more to sell a mixed load of cattle than a straight load and more to sell a mixed load of hogs than a straight load. He did not make the tariff which was filed.

Cross-examination:

When the witness was engaged in the ranch business he shipped his cattle to commission men on the Omaha market. He does not believe that a rancher or cattle producer unfamiliar with the market can sell to advantage to experienced buyers who are on the market all the time. He did not consider that the commission men were charging him too much to sell his cattle. The salesman has to apply skill in the handling and sale of livestock. When he first came to Omaha there was a wagon division which handled mostly hogs coming from a radius of eight or ten miles. He does not believe that Tariff No. 2 is too high. The filing of that tariff was a convenience afforded by the Exchange. He wishes it to be understood that the filing of the tariff by the Exchange rather than by himself does not indicate his unwillingness to charge the rates or his disbelief in their reasonableness. All firms at the market observe the same rates provided they are members of the [fol. 253] Exchange. He has had no complaint regarding the rates.

Redirect examination:

When a schedule of charges is being made or an increase is contemplated, the shipper is not consulted. A commission man could not vary his charges from the schedule. To do so would be a violation of the Packers and Stockyards Act and the Exchange rules. In a case like that his firm would not be afraid of the Packers and Stockyards Act as much as it would of the Exchange. The Exchange is more powerful in such a case. The witness could file a new schedule and make different charges and cease to be a member of the Exchange. The commission men render the best service of which they are capable. The same is true of other professions and callings.

Recross-examination:

In 1922, the maximum and minimum on straight carloads was the same as now for cattle, and a little more for hogs. The witness believes that the small increase asked for in schedule No. 2 is justified on account of the changed conditions and that there is no impropriety in asking for this increase in view of the statement made in the arbitrator's award that should any of the changes (made in the arbitrator's award) prove to be impracticable relief might be had upon proper showing to the Secretary.

Redirect examination:

The witness became a member of the Livestock Exchange 12 years ago. When he went to work for one of the commission firms on the market it bought him a membership. When he changed firms he returned the membership to the one he was leaving and used a membership of the one for whom he was going to work. He returned this when he left for the ranch. The reason for having a minimum charge is because you have to have some basis. It takes as much work to handle six head as twenty head, if they are the safe kind of stuff. Rates were higher in 1920 than now, and were reduced when prices generally went down.

JOHN NAPIER: Office Manager of that branch of the Charles O. Robinson Company located at Omaha; in Omaha since October, 1923; previously in Chicago. The Charles O. Robinson Company is a livestock commission company doing business on the Chicago, St. Paul, and Omaha markets. Charles O. Robinson is sole owner of the business in Omaha. This company sells and buys cattle, hogs and sheep.

The witness has been acquainted with Tariff No. 2 since the day it went into effect. He had nothing to do with the making of the schedule and does not know how it was made. The memberships in the Livestock Exchange are held by Mr. Charles O. Robinson and by salesmen. He does not know whether the firm took any part in making the sched- [fol. 254] ule. He thinks the new schedule is no more com-

plicated than the old one. He himself, however, never makes up account sales.

The circumstances which justify the advances in Tariff No. 2 are increased expenses such as increased bond to the Livestock Exchange, workmen's compensation which is necessary in the State of Nebraska, a bond to protect freight charges and increased expense in handling truck stuff, and increased plural ownership shipments. The cattle have to be weighed separately, sorted for brands, separate sales made for them, and remittance made to different banks.

The cost of handling cattle is more than handling either hogs or sheep because of more yard work. Cattle are sold and weighed in small drafts. There is more work in connection with feeding and watering cattle after they arrive in the yards than is the case with hogs and sheep. Sheep are shipped in from long distances and unloaded at the feeding lots where they are fed and then moved into the yards. Some member of the firm usually goes out to see the sheep and advise the shipper what day to ship them to market and to what market they ought to go. This expense is incurred by the commission firms. More special trips are made to see cattle than to see sheep and hogs.

All commission firms do the same detail work in a general way in handling shipments. The witness does not know this of his own personal knowledge. There are some customs undoubtedly similar, such as yarding, sorting and showing, selling to purchasers, weighing, making out account sales, and remitting to the proper person.

Plural ownership cars arrive in greater numbers in the fall than at any other time of the year, due to the fact that Western cattle come in smaller bunches and are thrown together and shipped in. This occurs more frequently in the case of cattle than other species. There are very few plural ownership consignments of sheep. The ratio of truck-in sheep to the total number of sheep received is less than the ratio of truck-in hogs to the total number of hogs shipped in. The proportion of truck-in hogs to the total number received is larger than in the case of either sheep or cattle. The feed lot refers to the lot which a man has on his own place where he feeds cattle or hogs. A feeding station is a place where sheep are regularly fed.

The justification for a minimum charge is that there is a certain amount of work to be done regardless of the number in the shipment.

Under the new schedule the commission on a car containing 14 head of cattle is $16. The commission on a car containing 13 head of cattle is 80¢ a head, or [fol. 255] $10.40, a difference of $5.60. If these are straight cars of cattle, one grade, the witness knows of no reason from the office viewpoint why the commissions on the 14 head should be $5.60 more than on the 13 head. But there might be a great deal of difference in handling on the outside.

Cross-examination:

The owners of the business drew no salary in 1925. The firm suffered a loss in spite of diligence in business. The witness was under the impression that his firm would not be taken as typical, due to the changes which have recently taken place.

Matthew Malone: Sole owner of the commission firm doing business as Snyder, Malone and Kaufman. He has been in the livestock commission business with others or on his own account for 28 years. He is a steer salesman and buys cattle on order. The cattle salesman employed by this firm sells butcher stuff, veal, etc. The firm has one hog salesman and no sheep salesman. Consignments of sheep are handled through another firm.

It is more difficult to sell cattle than hogs. This firm handles more cattle than other species. He knows no reason why there should be any material difference in the commission for selling 13 head of cattle or 14 head of cattle of the same kind. Either lot would be sold to the same buyer and weighed in one draft.

He did not consult with the Exchange committee when it was making up Tariff No. 2. He states that he might have been at the meeting of the Exchange when Tariff No. 2 was adopted, but he did not remember it. Cattle and calves are handled as different species. It is necessary to secure different buyers for different grades of calves. Veal calves go to the packers, and stock calves go to the country.

In some cases at least half the commissions received on a shipment go back to the shipper in the form of a market paper, answering letters, etc. Mixed cattle are harder to sell than straight loads. He stated that at one time he was a cattle feeder and cattle shipper and he sold cattle at $3.25 a hundred pounds and paid $10 commission for selling. He made more on a salary for a commission firm than he is not making out of his own business. In order to exist it is necessary for commission men to do their own work to keep down expenses. The business done by the witness' firm is secured largely from farmers residing in Iowa and Nebraska, and the number of loads of mixed ownership is large in comparison with the number of cars received. The selling of plural ownership loads necessitates more work than the selling of single ownership loads. Cattle are sorted for ownership and the cattle of each own-[fol. 256] er sold on its merits. It is just as easy to sell 20 head of cattle of one class as it is to sell five of the same class. It requires as much trouble to sell a few cattle for three or four owners as it does to sell three or four different loads.

He does very little soliciting and his expenses on this account will not average $200 a year. He makes an effort to hold on to his old customers. Under certain conditions of the market the buyers come around to the pens and look at the cattle. Under other conditions it is necessary for the commission man to go out and ask the buyer to come around and look at the cattle which he has for sale.

His firm sells feeder cattle to traders in the fall. Generally traders do not buy fat cattle. His firm has occasionally sold seconds for traders. He does not generally work so hard to sell seconds as firsts, because he has to sell the firsts and he does not have to sell the seconds. Sometimes the trader who places the cattle with the commission man sets the price on them, and sometimes he does not. Seconds sometimes sell higher than they do as firsts. This usually occurs on a rising market.

Cross-examination:

Witness has to work harder now to sell cattle than he did a number of years ago. Due to the fact that the yards are spreading out, it is harder to get buyers. He has sold

as high as 75 loads of cattle in one day. These were western cattle and were sold in 10 and 15 load lots. Shipments are much more cut up at present than formerly and harder to sell. A commission of $10 or $12 per car formerly is more than $21 commission at the present time. He does not believe that commissions have risen in proportion to labor and increased responsibility. When he first came to the yards 28 years ago he employed yard men for $35 a month, and now he pays $150.

Redirect examination:

The witness formerly sold 15 and 20 and 25 loads of cattle a day. In the case of cattle as they come to his firm now, two or three people work a day in selling 8 or 10 loads of cattle. He could have sold more cattle if he had had them to sell and on most days he could have sold twice as many as he actually did sell. Omaha is a 5-day cattle market. The heavy days are Monday, Tuesday and Wednesday. Questioned by the examiner the witness knew no reason why the commissions on 13 head of cattle should be $10.40 while the commissions on 14 head are $16.

T. H. Fonda: Engaged in the livestock commission business since 1900. He has charge of the hog department of Fonda-Kells-Christie Co., and formerly had charge of the office. The firm is a corporation owned by three individuals, all of whom are salesmen. It handles hogs, sheep and cattle. [fol. 257] The sheep consigned to the firm are turned over to another firm and sold on a split commission basis. The heavy season for range cattle is from August through October, and the heavy season for native cattle is from December to June. This firm handles more native cattle than western cattle. The heavy hog run is from January to June.

The firm handles an average amount of truck-in livestock and keeps a hog salesman in the truck-in division who, if occasion arises, is transferred to the railroad division. One of the cattle salesmen of the firm handles steers and one handles butcher stuff. Another salesman handles odds and ends, bulls and calves.

The firm is of medium size. The amount of business handled in 1925 was practically the same as was handled in 1924. The firm receives about the same proportion of plural ownership cars as do other firms on the market. Truck-in hogs are yarded at the pens adjacent to the truck-in unloading chutes. The employees of the firm usually yards the hogs. Cattle are taken from the truck-in division to the regular yards by yardmen employed by the commission company.

The proportion of plural ownership hogs received by the firm is about the same as the proportion received by other firms. Plural ownership hogs are sorted for ownership. If the hogs are all of the same class they are sold straight and weighed separately. About one hour each morning is necessary to sort the hogs. The witness had received three cars of hogs on the day he testified. One car was a mixed ownership load of four owners; the other two cars were straight. The straight cars did not require any sorting. The one car of plural ownership was sorted for ownership. One owner had two different classes of hogs, each of which was sold separately. When hogs of different ownership are sent to market they are usually marked by clipping the hair different for different owners. Sorting for ownership is not difficult after one has become familiar with the work.

Corn is delivered to the pens by the Stockyards Company and is fed to the hogs by an employee of the yard company. The yardman of the commission firm keeps an account of the amount of corn fed. The same method is pursued in the truck-in division except that there is less feeding in that division. Hogs arriving at the Omaha market at the present time are heavier than they were this time last year. Two hundred pound hogs run about 80 to the car. The hogs received by the witness on the day he testified run about 275 pounds, each and about 65 or 70 to the car. The minimum weight set by the railroad for shipping hogs is 16,500 [fol. 258] lbs. to the car, and the shipper has to pay freight on that amount whether he loads that much or not. Therefore, he tries to load a sufficient number of hogs to weigh this amount.

The increase provided in Tariff No. 2 had been in effect ten days when the witness testified. In his business the effect of the increase has been insignificant except in the

case of loads of heavy cattle running 15 to 17 head to the car. The increase in commission on these cattle amounted to $1.00 per car. He thinks the provision in the tariff applicable to excess weight in the case of hogs ought to apply also in the case of cattle, and that commission charges should vary somewhat according to the value of the shipment.

There is considerable sorting of hogs for quality. The witness sells hogs to packers, order buyers, and speculators. Plural ownership increases office work. On account of the increased number of account sales and different credits made out for the net proceeds, the detail work is multiplied all the way through the transaction from the time the cattle or hogs come into the yards until the last letter is written. Plural ownership shipments frequently come from shipping associations. Occasionally the proceeds from the sale of a mixed ownership shipment are sent to one individual and prorating is done, but ordinarily separate account sales are made out and sent to each owner. Hogs are usually shipped in 36 foot cars.

The witness occasionally sells hogs to speculators but does not know the percentage. Occasionally speculators plant hogs with the firm for sale. He estimates that sales to speculators represent a small percentage of total sales. He renders the same service when he sells for speculators as he does when he sells for the shipper. The firm of the witness received some double decks of hogs. In the handling of double deck cars two pens are necessary. In case the decks differ in grade they are handled as if they were entirely separate consignments. He presumes that his firm has received truck-in hogs equivalent to a car load. He knows of no reason why the excess weight feature applicable in the case of hogs arriving by rail should not apply in the case of truck-in hogs arriving in the equivalent of carload lots. On the day the witness testified his firm received one carload of mixed cattle, and the day previous it received nine carloads of all species. Of the cattle, three loads were straight and several were mixed.

He was not on the committee which worked out Tariff No. 2 and had on part in making it. He does not know who composed the committee or when he first knew of Tariff No. 2. His firm does not do a great deal of soliciting in the

country. It keeps in touch with shippers through corre-
[fol. 259] spondence and market letters are sent out weekly during this time of the year. (The witness testified on April 7, 1926.) His firm sends out market papers to its customers upon request. The expiration of the subscription is usually placed six weeks after the shipper has finished marketing his livestock. He does not know whether any harm would result to his business if he did not send out the market paper. Market letters state the condition of the hog, cattle and sheep markets, and are made as personal as possible, giving the sales which the firm has made.

The firm does not prepay telephone and telegraph messages. He thinks that any firm which had been in the habit of advertising would notice a slump in business if it suddenly ceased to advertise. The firm of the witness does no loan business. He regards some capital as necessary. The necessity of capital arises from the fact that a commission firm remits promptly to the shipper, and although it may not collect from the buyer on the day of sale or the succeeding day, remittances are deposited to the credit of the shipper in his country bank.

Cross-examination:

The business of the firm was handled as efficiently as possible during the years 1924 and 1925. As an illustration of the necessity for capital in the commission business, the witness stated that the week previous to his testimony two checks for livestock purchased of the firm, amounting to $1,100, had been returned marked "no funds." The firm had remitted to the shipper. Had there been no deposit at the bank the checks of the firm sent to the shipper might not have been paid. The system of remitting to the shipper before collections are made for his livestock is a custom on the Omaha market. It was necessary for his firm to incur expenses in the amounts set forth opposite the various items in the audit. He does not think that Tariff No. 2 will produce an unreasonable amount of revenue or that the shipper will be charged unreasonably. He is of the opinion that rates on fat cattle should be higher than those set forth in Tariff No. 2.

Redirect examination:

After a sale is made the purchaser is supposed to remit on the day of the sale, provided the bill goes through the clearing house by 2 o'clock on the same day. It is not always possible, however, to do this as only one hour intervenes from the time limit for bills to the closing of the banks. The success of a firm depends very largely upon the volume of business which it can get and the profitableness of the business. He thinks commission rates should be based on a percentage basis, both weight and selling price of the livestock being given due consideration. Until some such agreement is arrived at the same arguments will be gone through with continually and no solution of the problem arrived at.

[fol. 260] As an example of the inequity of the present rate arrangement, the witness cites the example of a carload of cattle bringing $2500 sold for $16 commission. A consignment of hogs valued at $1900 might be sold for a $16 commission. He further illustrates his point by saying that a load of ordinary stock cattle weighing 2200 lbs., mixed, might sell for $1400 net for a commission of $22. In the very next pen there might be a load of fat cattle which could be sold for $2500 on which the commission would be only $16. The witness believes that a percentage commission charge would have to be supplemented by special charges to take care of sorting.

In advertising, efforts are directed toward the territory which is adjacent to the Omaha market. Possibly his firm comes into contact with others competing for the same business in the same territory. Even if commissions should be charged on a percentage basis, the witness wants a greater revenue than he has been receiving. In fixing rates on a percentage basis he would expect to have something to say, but he did not have a voice in making Tariff No. 2.

T. W. Tomlinson: Secretary of the American National Livestock Association; resides in Denver Colorado. This Association is the national organization of stockmen. Its activities are confined mainly to that territory west of the Missouri River, although there are some association mem-

bers and individual members in that territory east of the river. The majority of members are engaged in the cattle business. The Association has two classes of members; livestock organizations throughout the west, and individual stock men. The following members of the National Livestock Association patronize the Omaha market; the Nebraska Stock Growers Association; Wyoming Stock Growers Association; Wyoming Wool Growers Association; Montana Stock Growers Association; and the Western South Dakota Stock Growers Association. The membership of the Association represents perhaps 100,000 producers. Its greatest membership is represented through these organizations affiliating with it.

In behalf of the American National Livestock Association and its members, the witness made a protest against the ruling of the examiner that they could not intervene.

The American National Livestock Association and the members were largely responsible for the passage of the Packers and Stockyards Act. The shippers are principals and the commission men are agents. The witness believes that the Secretary wants to hear and ought to hear the producers' side of the case. Unless they are permitted to intervene the case cannot be properly heard. He was informed by Mr. Caine and by the Secretary that the Omaha hearing would be the leading case on commission charges [fol. 261] under the present Administration. He was invited and urged to appear and participate in the proceedings.

A formal request was entered in the record that should the Secretary determine the advance, or part of the advance, unreasonable reparations would be made. The National Livestock Association and its constituent members were not satisfied with the arbitrator's award. The witness expressed to the Chief of the Packers and Stockyards Administration and the Secretary of Agriculture the intention of the National Livestock Association to apply for a reopening of the Denver and Fort Worth cases which had been dismissed without prejudice. He feels that a precedent set in a trade practice case is not applicable in a commission rate case.

A motion to strike on the ground that the statement was irrelevant denied.

The witness previous to 1900 was traffic manager of the Chicago Livestock Exchange and served in that capacity for three or four years. He was business secretary of the annual conventions of the National Livestock Exchange. While in Chicago he was connected with a commission firm in an official capacity. Later he was general agent of the Chicago Junction Railway and Stockyards Company. He became secretary of the American National Livestock Association in July, 1905. In 1906 various livestock exchanges announced an advance in commission rates on hogs and sheep of $2.00 a car. The commissions previous to the advance were $6.00 per single deck.

The commissions on hogs and sheep were $10 per double deck. These charges were increased to $8 per single deck car and $12 per double deck car. The majority of the members of the National Livestock Association, being cattlemen, were not concerned with the advance. The sheep men and hog men who were members of the Association denounced the advances. As a protest against these advances the Cooperative Livestock Commission Company with a capital of $50,000, shares $10 each, was launched in the latter part of 1906. The witness was elected secretary and treasurer of this company and served in that capacity as long as the company was in existence. His duties in connection with this organization required that he spend a great deal of time on the Kansas City, St. Joseph and Chicago markets. The testimony of witnesses in lawsuits and injunctions growing out of this business added to the witness' previous knowledge of the conduct of the commission business. The failure of the Cooperative Company and practices which seemed to the members reprehensible [fol. 262] and unreasonable led to the belief that there should be a reform in marketing conditions and was the inspiration behind the passage of the Packers and Stockyards Act.

The American National Livestock Association and important state associations appointed a committee of fifteen, composed solely of producers, whose work resulted in the cooperative selling agencies now in existence at many of the public markets. Most of the livestock associations throughout the west feel that some reform in marketing methods is necessary.

The witness states that the bulk of the cattle men in the range country are bankrupt and are being forced out of business and being replaced by new ones. Ninety per cent are broken or so badly bent that they cannot recover. That has happened in the past four or five years. The livestock produced in the country has gone into the market and has been consumed. The stockmen feel there is a consumptive demand for their product and cannot understand why they cannot receive what has been denominated in the hearing as a living wage. The witness was connected with the Mallory Livestock Commission Company. He has consigned cattle and sheep to commission men on the Omaha market. The first shipment was six or eight years ago and the last one two years ago.

Exhibit 84 is copy of a rate schedule proposed by the witness as reasonable. Objections on the ground of immateriality and incompetency overruled.

In the west there is no traffic which moves in a more uniform volume into market than Livestock. This movement is seasonal. Range cattle and sheep are shipped to market from August to the end of the year. Fat cattle move to market throughout the entire year but in a larger proportion in the winter and spring months when range grass livestock are not available. Hogs move in fairly even volume throughout the year. The report of the Stockyards Company shows that the number of cars per week and month is fairly uniform. In spite of this even flow of livestock, the commission firms do not receive a uniform number of consignments. Stock men generally believe that the business of livestock commission firms, not only in Omaha but in all these markets, is very badly overdone and overmanned. This is an almost accepted fact in commission house circles. Unevenness in receipts by commission firms would be partly relieved if there were fewer firms on the market. The larger the number of firms the greater the unevenness in daily receipts.

The witness believes that the commission men are victims of circumstances over which they have no control, of an uneconomic marketing system. The presence of small op- [fol. 263] erators on the market who are unacquainted with it, detracts not only from the selling power but results in

unfortunate and bad sales which in turn seriously affect the market. There would not be the large number of speculators on the market if the commission firms were uniformly efficient. The speculator preys on inefficiency. Selling power is diffused and when pitted against a concentrated buying power gets the worst end of the bargain. Concentrated selling power would bring better results in the sale of livestock, particularly in the matter of prices. The witness has talked with many commission men at various markets and they are all pretty unanimous in the fact that the business is overdone; that it could be performed very much better by a smaller number of firms; that the control of the market would be largely increased; that they could perform the services more economically to themselves and to their principals.

One aim in the preparation of the schedule submitted by the witness was to simplify the schedule so that the shipper could plainly understand it. There is a feeling on the part of stockmen that it is unnecessarily complicated and could be stated in a simpler fashion. The witness suggests that there be a flat rate for single ownership carloads of livestock in a 36 ft. 7 in. car. Probably 95 per cent of all livestock received at any of the markets today moves in that size car. This flat rate applies regardless of the weight of the car. For cars above 36 ft. 7 in., up to and including 40 ft., the witness recommends 8% additional; from 40 ft. to 44 ft. cars, 15% additional. He thinks that $14.00 per car for selling a 36 ft. car of cattle is reasonable. Some members of the American National Livestock Association are in favor of a percentage basis of charging commissions subject to maximum and minimum. The great majority, including the witness, favor a per car rate. The commission on a single deck of calves is the same as that for cattle. On double decks the commissions are $4 higher. Commission on single deck cars of hogs is $12. The witness believes that $2.00 represents the reasonable difference in commissions in handling single deck hogs and single deck cattle. Few double deck cars of calves and hogs come into the market. The double deck rate on hogs is $16; single deck rate on sheep $12. This is double the single deck rate of twenty years ago. The double deck rate on sheep is $16 per car.

Most sheep come to Omaha in double deck cars. Single deck cars arriving at the Omaha market come from the native states, by which is meant cornbelt states. Buying commissions are not to exceed the selling commissions. The market agency has the option of establishing the buying commissions as necessities seem to dictate. On mixed [fol. 264] species a per head rate applies. The graduation between the commission charges for various species maintains the relationship now in effect at the various markets. The rate on mixed cars yields a larger commission than would be the case on straight cars. It is recommended that cattle and calves be treated as one species. This recommendation is made because they are yarded in the same division and there is little difference in the way they are handled. In the past the commission men have regarded cattle and calves as the same species and the witness believes that this is right. The drive-in rate on cattle is 10¢ per head higher than the per head rate on mixed species shipments. The drive-in rate on calves, hogs, and sheep, each is 5¢ per head more than the per head commission on mixed cars.

The witness believes that the truck-in business should be encouraged. In connection with drive-ins a maximum is provided. This maximum follows the rule of the livestock exchange in its schedule of March 15, 1924, except that the number of head to be defined as a car has been decreased, thus increasing the charge. In a case of plural ownership lots it is provided that when they are handled as single ownership lots the single ownership schedule will apply. When plural ownership carload lots are sorted, sold, or weighed for ownership marks or brands, the charge per head is the same as the drive-in schedule. No carload maximum is provided in the case of plural ownership cars. No additional charge per draft is provided. The per head charges are made high enough to compensate for the additional work in handling plural ownership lots. Prorating is done at the rate of 25¢ per owner with a maximum charge of $2.00.

The amount of work required in selling different species in cars or plural ownership is sometimes influenced by the condition of the market. Under the schedule proposed by the witness the actual work performed on one car would warrant a higher charge than that made for handling an-

other car. The commission business has to be viewed in its entirety. Cars requiring a great deal of service have to be taken along with those which require a minimum of service. The bulk of livestock coming to this market comes in single owner straight carload lots and should be handled with practically no sorting. This is particularly true of range sheep and cattle. It is probably true that today not so many cars are received from a single shipper as formerly, yet there are producers in the west that ship in trainload lots.

Many sheep men send their sheep to feeding stations and they are brought into the market gradually as conditions require in two or three or four carload lots. The majority of feed cattle move into the market in straight carload lots and are handled with a minimum of service or no extra [fol. 265] service at all so far as sorting and drafts are concerned. There has grown up a custom among commission men of selling livestock with so many head out at a different price. While this is necessary in some cases in order to receive the largest possible sum for the consignment, it is sometimes done so that the high price paid for a part of the cattle will be offset by the low price paid for the other part. Such an arrangement makes it appear that a very high price has been received for the cattle. This sometimes is used for advertising purposes. Producers criticize this method.

The ranch man does not feel that he is getting as much service today from the commission man as he did in former years. Gradually there has grown up on the market a large number of traders and speculators, who specialize in handling stockers and feeders. The witness estimates that 95 per cent of the stocker and feeder cattle are sold by commission firms to speculators direct. This has led to a movement described by some of the Nebraska stockmen that whenever possible they are trying to avoid the market. They feel that they can get better results by shipping direct. Stocker and feeder cattle are purchased by speculators to be resold to country men, either direct which rarely occurs, or through the commission house on order. The witness acknowledges the necessity of speculators and traders on the market but denies the necessity of even as much as 50 per cent of stocker and feeder cattle going

through their hands. It is an extra expense either to the shipper or to the feeder buyer. He feels that the commission firms should encourage the sale of stocker and feeder cattle direct from the commission men to the feeder or to the feeder buyer.

A ranchman who ships in carload lots complained at the Phoenix convention of the American National Livestock Association that the entire consignment of stocker and feeder cattle shipped by trainload went to one speculator. The real service of the speculator is in the purchase of odd lots of cattle. The western stockmen consider the domination of the trader over the stocker and feeder market a market evil which they are trying to correct, but so far unsuccessfully. Commission men have given as a reason for this condition the fact that the speculator is always on the market ready to buy, whereas the country buyer comes only occasionally. Some cattlemen feel that the commission men encourage this system because it affords them an opportunity to secure additional commissions for purchasing livestock. The direct marketing of stockers and feeders is a result of this dissatisfaction.

The witness thinks that reforms may possibly come from the growth of the small packing industry in the central market and on the outside from the cooperative selling [fol. 266] agency. It is his view and that of his association and its members that the existing charges on the Omaha market are unreasonable, unjust, and unfair; that the business is overmanned and overdone; and that this situation has been the natural sequence of too profitable commission charges. The efficient commission firm, with reasonable volume of business, can make plenty of money on the charges recommended in his schedule. There should be some reduction in the number of firms operating on the market and the only way this can be brought about is by taking away some of the attractions arising from unreasonable charges. He believes that with a third less commission firms on the Omaha market the shipper will receive better service and the remaining firms will have better control over prices. It is his hope that the commission agencies will adopt some method of encouraging the sale of stocker and feeder cattle direct to other firms or to farmers or feeder buyers on the market and give these other buyers

an equal and fair showing with that given the trader or speculator buyer.

As having a bearing upon the speculator evil and domination of the markets by traders, the witness cites the experience of the Cooperative Commission Company organized in 1906. The company purchased two old line commission firms, both of which were reputable and both of which had a good business. No sooner had the Cooperative Commission Company entered the field than it found itself in disfavor with the Traders Exchange. With the single exception of a milch cow, accidently bought by a trader during the early days of the operation of this company, not a single purchase by a trader was made from this concern. The boycott was absolute and drove the company out of business, in spite of injunctions brought against the commission men's exchange and the Traders Exchange.

The witness believes that perhaps neither the commission men's exchange nor the Traders Exchange is now necessary in view of provisions made in the Packers and Stockyards Act. Dual supervision of the market must ultimately lead to friction. There can be only one master of the situation and that should be the Government. The time has not yet arrived when the Omaha Livestock Exchange should go out of existence.

After the audits had been introduced as exhibits by an auditor for the Government, the witness examined them and was agreeably surprised at the satisfactory showing made by most of the firms. It was reported among the stockmen and commission men that no one was making money in the commission business. This is a better showing than he had expected due to the fact that there had been a falling off of 18,000 cars in receipts in 1925 as compared with 1924. [fol. 267] Stockmen honestly believe that the commission men are incurring unnecessary solicitation expenses. Stockmen formerly used to get free telegrams and free all kinds of service. These expenditures were not legitimate and the witness does not know that any stockman who fully appreciated the courtesy objected to its withdrawal. He notes in going over the audits that the advertising, traveling and soliciting expenses of one firm represents 30 per cent of the total gross commissions. The cutting down of these unnecessary expenses is a fruitful field for the reduc-

tion of overhead. He doubts whether the expenses incident to the maintenance of the Exchange are legitimate operating costs.

There is too much gratuitous service on the part of commission men which is of no benefit to the patrons of the market. He believes that patrons of the market are not entitled to free market papers. Trips into the country may be made at the suggestion of the shipper but most of that is done by the commission man for the purpose of securing shipments. He doubts whether this expense is legitimate operating expense. He never consulted anyone in the preparation of his proposed schedule except Mr. Mollin of the Kent & Burke Co.

In regard to the percentage basis for commission charges some of the shippers of stocker and feeder cattle favor a commission equal to a certain percentage of the value of the shipment, a minimum being set below which the commission should not fall. Stocker and feeder cattle usually carry the maximum commission and sell at a comparatively low figure per car, whereas fat cattle sell at a high price per car and pay the minimum commission. The shippers of stocker and feeder cattle feel that the commissions which they pay are too high in comparison with the commissions which the shippers of fat cattle pay. The difficulty with the percentage rate without a minimum is that a percentage fixed high enough to compensate commission firms reasonably for selling low grade stock would yield too high compensation for selling high grade stock. If the commission were fixed low enough to represent a reasonable charge for selling a carload of fat cattle it would be too low for selling a car of low grade cattle.

Cross-examination:

The membership of the American National Live Stock Association fully enumerated. The witness wishes to be understood as reflecting as nearly as humanly possible the views of the executive committee and the membership of the association. He wishes the Secretary to understand that what he had to say about elimination of commission firms, trading with speculators and other kindred matters represents the views of the executive committee. He presumes that the executive committee reflects the views of the

[fol. 268] members. The membership of the executive committee is composed of 92 members. Mr. Graham, who testified, is a member of the general counsel and Mr. Delatour is a member of the executive committee. Mr. Burke, who also testified, is Vice-President.

As substantiating his statement, the witness read into the record a resolution adopted at Phoenix, Ariz., on January 15, 1926, in which the opinion was expressed that there is an increasing necessity and demand for better marketing facilities and regulations at the central markets; that the auction plan of disposing of livestock is growing in popularity and is proving to be satisfactory to both seller and buyer; and that an effort should be made to induce the Stockyards Company at the principal market centers to provide facilities for such auctions. It is expected that the stock will be consigned to commission men and that the shipper will pay the regular commission and yardage charges. The witness thinks that perhaps 35 or 40 members of the executive committee were present at the Phoenix meeting.

The witness has not talked to as many people regarding schedule No. 2 as he would have done had he not been in Washington, where he obtained his first information relative to it. He has discussed it with Mr. Sykes, president of the Corn Belt Meat Producers Association and president of the Producers at Chicago, also with Mr. Stewart, Mr. Burke, Mr. Mollin, Mr. Collins, Mr. Jordan, Mr. Murdo McKenzie, Mr. C. M. O'Donel, president of the American National Livestock Association, and Mr. B. F. Davis, secretary of the Colorado Livestock Association. A letter from Mr. Davis was read into the record, stating that Mr. Davis met on March 20 with the State Board of Livestock Commissioners of Colorado, nine in number, representing the nine livestock districts in Colorado. The first business discussed was the proposed advance in commission rates in Omaha. The Board was unanimous in its opposition to an increase in rates. At a meeting of the Board of Control it was voted to notify the witness that the Colorado Stock Growers Association as an association is opposed to any increase in commission rates in Omaha. The witness was officially requested to represent the Colorado Stock Growers Association at the Omaha hearings. He had half a dozen or so letters from other associations. He may have

talked to other stockmen about this particular advance, but he does not recall the names. He was requested in a letter under date of March 18, 1926, to represent the Montana association. He states that he received a letter from Mr. Marshall, secretary of the National Wool Growers Association, stating that it was his understanding that the commissions for selling sheep were not involved and that for the present he did not wish to take any part in this particular case.

[fol. 269] The witness would not be surprised if the attorney for the respondents stated it to be a fact that both Mr. Higgenbarth and Mr. Marshall are not concerned with this rate and that they are satisfied both with rates and services and the only thing that they would like to have the commission men do is to endeavor to assist them in procuring more satisfactory conditions in certain markets, among which the Omaha market is not included. The schedule proposed by the witness does not purport to represent the attitude of the National Wool Growers Association. The witness had not received a letter from Mr. Byron Wilson stating that so long as the increase asked does not raise the commission charges on sheep he did not feel that his association would be justified in joining in opposition to it. Being shown a letter to Mr. Stryker and an unsigned one to him, the witness said he had no doubt that the letter was written.

The schedule proposed by the witness does not represent the sentiment as revealed by Mr. Wilson's letter. The proposed schedule represents the sentiment of Mr. Graham, president of the Nebraska Stock Growers Association and a member of the Board of Control of the National Livestock Association. The witness bases his conclusion upon correspondence and interviews and upon an invitation which he had from Mr. Graham, Mr. Jordan, and Mr. Stewart to attend a general meeting of representatives of the growers and the commission men to be held in Omaha prior to the arbitrator's award for the purpose of reaching a mutual agreement as to satisfactory commission charges. The consensus of opinion of all three of these men was that rates on cattle should be a maximum of $15 and a minimum somewhat less.

Relative to Mr. Graham's view, witness does not believe that Mr. Graham's testimony (p. 172) indicates that Mr.

Graham acquiesces in Schedule No. 2, because a man frequently will not go as far in voicing his sentiments on the witness stand in a case like this as he would in personal conversation. The witness has never talked with any stockman who was satisfied with the Gore-Dagger award. This award was a distinct disappointment to all members of the American National Livestock Association. Mr. Bixby has unhesitatingly lambasted this schedule.

The witness has not been in the stockyards at Omaha since he sold two or three loads of cattle or sheep some five, six, or seven years ago. He has not observed the way business is transacted in the truck-in division. That part of the schedule relating to drive-ins was worked out in collaboration with Mr. Mollin, and the maximum is due to his suggestion.

The witness does not know how many hogs the members of his association send to the Omaha market. He recalls [fol. 270] that he was in the hog house at Omaha about 1908. What information he has as to the number of commission firms doing business on the Omaha market is that published in the annual report of the Stockyards Company and what Mr. Walker, the Government supervisor, told him. He does not know the largest number of cattle received by any one firm; he estimates 3,000. He does not know and cannot be expected to remember the receipts of smaller firms. He knows that a lot of firms handle less cattle than they ought to. The primary cause for this is that the shipper does not favor the small firm with his shipments and this may result from a failure to advertise or inefficient service. The members of the American National Livestock Association in selecting a firm to which to consign its livestock are influenced by the volume of business of that particular firm. The only way to reduce the number of commission firms on the market under present conditions is to lower commission charges so that the business will not attract additional firms. It would be better for the Omaha market if the business arriving should be conducted by 30 firms, which is half the present number.

The witness estimates that 95 per cent of the stocker and feeder cattle go into the hands of speculators. This estimate is based upon a statement made by Mr. C. M. O'Donel, president of the National Livestock Association on the basis

of figures seen in Washington. Mr. O'Donel raises yearlings and canner cows. One of his reasons for not patronizing the market is because all his cattle go to speculators.

The statement of the witness relative to the activity of speculators was a general statement, but he thinks it also applies to Omaha. There are about 100 firms, composed of about 150 people, operating as speculators and traders on the Omaha market. Mr. Walker, supervisor of the market, supplied him with this information. Some speculators are necessary in the market and perform an economic function, but many do not. It is common alley talk that the speculators live off those salesmen who have not a proper conception of the value of stock.

Mr. Burke of the Kent & Burke Co., Mr. Mollin of the same company, and Mr. Collins of Kit Carson, said it was pretty hard for anyone to understand the Gore-Dagger award because of its complexity. The criticism of this schedule, however, is not so much on account of its complexity as on account of the rates.

The witness reasserts that there has been a good deal of discussion among the members of his organization as to whether commission rates should apply per car, per head, or on a percentage basis. In making the statement that [fol. 271] one-half the present number of firms could attend to the business at Omaha he wishes to be understood as meaning that this would imply whatever additional help was necessary to operate efficiently. The opinion that diffuse buying power makes for lower prices dates back to the time he was employed in Chicago and later with the Co-operative Commission Company. Questioned as to whether these conditions apply at Omaha and the source of his information, he stated that he had talked the matter over with Mr. Stryker but that he and Mr. Stryker may have disagreed on the point. He bases his statement upon his belief that a highly organized and centralized buying force through the commission firms results in a price lower than would be the case if the buying and selling forces were more equally matched. Whether this information be true or not, it is one which is entertained by a great many people, and the sufferers from this lack of coordination on the part of the selling force are the shippers. If you take away one buyer of livestock from five, you have eliminated some competition regardless of whether the remaining four buy as

much. If there are only five sellers on the market, which is probably too small a number, they would exert a greater influence toward better prices than 35 would.

Should the schedule proposed by the witness be adopted the efficient firms, in his opinion, will make vastly more money than they do today and will have more satisfied customers. Some firms may have to retire and it will be a survival of the fittest. Unfortunately, some of the fit ones may fail.

If witness' schedule is adopted he hopes some of these firms will go out of business or there will be consolidations. He thinks that this would result in more efficient service. Everyone is entitled to a reasonable return for his services. If there are too many commission firms on the market the business is overdone and overmanned and probably some of them would have to retire, but this is no proof of the unreasonableness of the charges suggested. In preparing his schedule he took into consideration the charges that used to prevail in the Cooperative Commission Company at Kansas City, the testimony that he has heard at various hearings, and the views of stockmen. He did not take into consideration a specific sum as a salary for the salesmen of reasonable ability. He assumes that the salesmen are now being paid a reasonable sum and if they could handle more business, as he believes they could, a firm would make more money at the reduced rate than they would at the present rate. He believes he was a little more liberal toward commission rates on his hog rates than on his cattle rates. He was influenced in making the hog rate by the opinion of [fol. 272] Mr. Mollin of Kent & Burke Co., which ships some hogs. In recommending the sheep commission charges he did not consult with anyone connected with sheep production. On double deck sheep he took into consideration about the same factors as in the case of cattle.

The sheep commission business, so far as the selling end of it is concerned, is in a better condition than the cattle commission business because there are not so many sheep salesmen. There is closer organization and the sheep salesmen are in a position to command a little better treatment than the scattered selling forces of cattle and hogs. He bases his opinion that $12 to $16 is a reasonable rate upon his experience in the Cooperative Livestock Commission Co. in Chicago in 1907, 1908, or 1909. He believes that the

sheep department charged $6 and $10 a car and made more money than any other department. The commissions for selling a single deck of hogs or a single deck of sheep should be approximately the same.

The proposed schedule is considerably higher than the rates prevailing in 1907, 1908, or 1909. He believes the commission men are entitled to make more money now than they received at that time and that his schedule will bring them in more. The condition prevailing in 1906 was one factor which the witness took into consideration in making his rates. Other factors were increased cost of living; increased wages; the fact that commission men are performing more service on some classes of livestock now than formerly; and that livestock is selling a little higher. A commission company in Omaha handling 30 per cent of the business and charging $18 commission went out of business, but he understands that it was not the rates that caused the failure but the fact that western sheep men did not ship to this organization.

The showing made by the commission firms was better than the witness expected. He thinks the commission business in Omaha is quite profitable. The exhibits indicate that unless some of the firms do better, that is get more business or more commissions, they will have to go out of business.

Taking Exhibit 7 the witness analyzed it and stated that it does not show quite as favorable a condition as some of the others, but he believes it is a profitable firm.

Exhibit No. 19 was also analyzed. This exhibit shows a very profitable business.

[fol. 273] Exhibit No. 38 was analyzed.

By making loans to producers, many commission men have sustained losses as severe as the producers themselves. It would be utterly regrettable should these commission men who have lost money trying to help the producers, have to go out of business. The producers of livestock have lost money continuously for the past four or five years. The livestock which occasioned this loss has gone into consumption and has been disposed of. Can't the packers market this livestock in the finished product for a high enough price to save the stockmen? Can't the

market agencies sell it at a high enough price to let the cattle man out If the evolution of the marketing process had the result that some commission men would have to retire and go into some other business, they might be better off. The interest of the livestock industry is of more importance than the interest of any commission man on the market. The witness regrets as much as any one if it should be necessary for any one to retire from business, but if the business is uneconomic it has to be changed sometime. If it is too profitable and the present rate attracts more into it, you have another vicious circle, another advance, and more commission firms.

A more uniform flow of livestock to the central markets would be a benefit to producers, to commission men, and to stock-yards. There is more uniformity now than formerly. The witness knows of no business that is comparable to the livestock commission business. It is not seasonal like fruit in some sections. It can hardly be compared with grain which moves into elevators and is stored. He has often tried to find some business comparable with the livestock commission business, but has failed to locate one.

The net operating profit for the year 1925 was approximately $300,000. In the case of a number of firms the owners did not draw salaries, but divided profits, if any, as salary. The witness thinks that the livestock shipper should pay for the market paper if he cares to receive market information in this way. The market papers are excellent publications. The producer who ships 50 or 100 carloads gets one or possibly two papers, while the occasional shipper of one car gets the same. The burden of the expense of supplying the market paper is not fairly distributed. If the paper be considered as a favor, the shipper of one car gets a much larger favor than the shipper of many cars. Some of the livestock producers feel that the market papers are the organs of the commission men and naturally favor those interests which support them. The witness thinks that the market review would be fairer if the papers were entirely divorced from the commission [fol. 274] men and stockyard influence. The influence exerted by the commission men and stockyards over the mar-

ket paper is not a direct influence, but naturally the paper is inclined to favor those who support it.

The witness cites a case in which a firm received gross amounts of $115,000 and expended $21,000 for advertising. This does not appear to the witness to be a fair amount for a commission firm to spend for that purpose. It is not a reasonable operating expense in the determination of what is a reasonable rate. The elimination of the expense of the market paper as an operating expense would result in a great increase in revenue to the commission men and thus give them an opportunity, if they so desire, to reduce commissions. If the producers receive the same number of papers that they are receiving at the present time they would of course pay the bill, but the man who shipped many cars could afford to pay the bill for the paper and those who ship only a few cars are not entitled to receive it. Both the evening and morning papers published in Omaha give as much market information as a shipper could reasonably expect. If the market papers are not needed and the stockmen do not feel that they are worth enough for him to pay for them then they ought to go out of existence. The witness thinks that as long as a man can get a paper merely be requesting it, it does not make much difference whether he requests it or whether it is sent him voluntarily by the commission men.

The rate schedule proposed by the witness does not contemplate that the expense due to sending out the market paper will be included as an operating expense. It does contemplate an increase of expenses in circularizing patrons. Had the witness given full weight to the elimination of expense due to sending out the market paper the schedule would have been lower than the one he actually recommended. It is suggested that the market paper might be sent to those who ship a minimum number of cars or more. This would result in a material reduction in expenditures. The witness does not know what the total expense is for the Journal Stockman for the whole market, nor what the advertising is. He noticed in his examination of the audits that some firms have very small advertising accounts and that others are extraordinarily large.

Evidence of witness Delatour, given at page 192 of this record, was cited to the effect that he thinks the arbitra-

tor's award is high enough and he was satisfied with it. The witness states that Mr. Delatour has told him several times that he thought commission rates too high. State-
[fol. 275] ment of Mr. Delatour to the effect that he would not say that the arbitrator's award is too high cited. The witness believes the intimate relationship existing between the Nebraska Stock Growers Association and the commission men makes officers such as Mr. Graham and Mr. Delatour reluctant to testify. The testimony of Mr. Stewart was cited to the effect that he was not satisfied with the arbitrator's award.

The witness has some doubt in his mind as to whether exchange dues are properly chargeable as operating expenses. He is fearful that the best results may not be obtained if the Government is regulating the commission man on one hand and the Exchange on the other. He gets the impression from the testimony that some of the commission men have a more wholesome respect for the Exchange than they do for the Government. He realizes that the Government cannot at the present time regulate all market agencies in the same manner as the Exchange is doing. Possibly it might in the near future be considered advisable for the Exchange to retire from the field and let the Government see what it can do in the matter of regulation. The witness does not know what the expense to the Government would be. In case of Government regulation the entire public pays the bill, whereas in the case of Exchange regulation only the shippers pay it. The Exchange has a long line of creditable achievements. If the Exchange is responsible for the excessive movement of stockers and feeders direct to the speculators or traders, that is an evil working against the interest of the livestock raiser and feeder. The Livestock Exchange has been a benefit to livestock prodcers in many general matters, but the witness does not wish his statement to be understood as meaning that he approves entirely of all the policies of the Exchange. He believes that the action of the Exchange in establishing what might be called a Union which secures to the inefficient worker the same pay as to the efficient worker is reprehensible. It is the whole theory of the Union that permeates the activities of the Exchange that the witness cannot entirely approve.

The witness does not believe that the American National Livestock Exchange represents the theory of the Union as does the Livestock Exchange. The Association is a voluntary organization and so is the Exchange. The livestock men can and do continue in the livestock business without becoming a member of the Association. In Omaha, on the other hand, a man who starts to do an old line commission business cannot operate successfully unless he joins the Exchange.

[fol. 276] Asked whether he receded from his position relative to Government regulation, he answered in the negative and stated that he thinks the Government ought to regulate operations and that it may be necessary ultimately to have more rigid supervision than exists at present. He does not contemplate that the Exchange will go out of business immediately.

Witness' attention called to a quotation from a speech of the Secretary of Agriculture, in which it is stated that the Exchange is an institution that is absolutely indispensable to the merchandising and disposition of cattle produced on the farms and ranges.

The witness believes that the less the Government has to do with private affairs the better, but there are times when it is necessary for it to assume or obtain the authority in order to render justice to all concerned. It is the policy of the Exchange to abide by the rules of the Department of Agriculture and the Secretary. Any violation of Government rule at the present time is punishable by the Exchange.

The witness believes that firms should advertise. It would be well to eliminate some of the personal visits made to stockmen. Advertising expenses consume too large a proportion of gross incomes from commissions. The commission man who spends a large share of his time in securing business from others is not an absolutely impartial judge of the amount he should expend in advertising.

If there were consolidations and some of the weak or inefficient firms were eliminated, the remaining firms might make a great deal of money on the business coming to this market. Year in and year out there is a large volume of business coming to Omaha. If 60 firms seek to divide this business up, they cannot increase the volume. They all

must have less. The witness believes that there is some merit in competition in selling. The reason why the shippers of livestock do not seek out the most efficient firms and allow the others to starve is because the shipping of livestock is not altogether optional. Bonds of friendship influence the shipper, and he is not always in a position to pass upon the relative efficiency of the respective firms.

The witness is managing editor of The Producer, a livestock magazine published in Denver, Colorado. The livestock industry is a little more promising now than it has been for four years. There have been many appalling failures in the livestock business in the west and a great many commission firms have suffered as a result of it. [fol. 277] Prices in the range territory are considerably better than they have been for quite a few years. The witness believes that hog prices will decline somewhat and that the same is true with regard to lamb prices. He thinks that 1926 will be a good year for the range sheep industry. He understands that a great many sheep feeders lost money during the season just drawing to a close. He considers that a limited amount of advertising carried by commission firms in his paper would not be any more wasteful than that carried in another paper. Within limits, the expense of publicity, advertising and entertainment are legitimate, but expenses on this account have gone to extremes. He thinks there are old firms giving excellent service and advertising little that will continue to exist.

Many expenses such as that incident to branding are legitimate charges against the business. The witness approves of the brand inspection system as now in effect. The associations of livestock producers got in such a bad condition that they could not finance themselves. These associations formerly paid for brand inspection service through dues and assessments. Matters reached the point where the brand inspection service must be abandoned or financed in some other way, and the present system was agreed upon. The brand inspection fee collected by the commission men goes into the treasury of the livestock association. The commission men in thus helping the association also help themselves in that they secure greater safety in their own business.

Questioned further relative to visits to the country, the witness states that the expenses incident to a reasonable amount of travel are legitimate but there is a limit beyond which it should not be allowed to go. This limit is what the witness wants the Department of Agriculture and the Secretary to determine.

Redirect examination:

Witness Graham's testimony on direct examination was cited, to the effect that in his opinion and the opinion of the men represented by him the rates (Tariff No. 2) are uncalled for. The witness thinks that this statement reflects his understanding of Mr. Graham's feelings and those of the members of the association which he represents. On the basis of conversations and letters received from Mr. Graham, the witness believes that it is Mr. Graham's opinion that the charges tentatively agreed to by him and his association in the Omaha conference are reasonable. On cattle this rate was $16. He also believes that it is Mr. Graham's opinion that the Gore-Dagger arbitration schedule was too high.

Relative to Mr. Delatour's testimony the witness, after [fol. 278] having had read to him additional statements, is of the opinion that Mr. Delatour believes the Gore-Dagger award too high. The stockmen feel somewhat bitter relative to the way commission charges are changed. The producers have never been consulted and have not been given reasonable notice. This leaves a bad impression; the stockmen feel that they have no recourse, that they have to pay the increased rates and that they might as well do so gracefully. This is the reason that the stockmen wanted an impartial tribunal.

Brand inspection is a service both to the shipper and to the selling agency. The commission man must be responsible for sales and for remitting proceeds to the proper owner. Therefore, brand inspection is necessary. The commission men could not go long without it without great confusion and possibly large losses to themselves. If the stockmen did not perform this service on the market the commission men would have to work out some system to take its place. The system does not benefit the producer alone. Brand inspection is done by the commission men and

charged to the shipper. It is mutually beneficial to the producer and the commission man, and is paid for by the shipper.

The improvement in the condition of the range cattlemen does not justify the increase in charges provided for in schedule No. 2. The bulk of the increase falls at the maximum which is assessed against range cattle. When the selling power is diffused and the buying power is concentrated the advantage runs strongly to the buyer's side of the market.

There is a very close relationship between the number of commission firms and excessive advertising. The witness has heard of firms just entering business who spent a large amount for advertising. New commission men are active in advertising themselves at meetings of those associations whose members ship to the Omaha market. The man who is engaged in the commission business is a better judge of the amount of money which should be expended for advertising than the witness himself. The witness, however, considers that a new firm spending a half, a third, or a fourth of its gross income in getting business pays too much for advertising. That the rules of the Exchange limit the amount of solicitation is a recognition of the fact that a limit to expenditures for publicity has to be set. This is done on the same theory that free meals, free telephone calls and free telegrams to shippers have been discontinued.

Commission men are almost the last ones from whom [fol. 279] the witness would hope to get an impartial opinion as to reasonableness of charges. They are the beneficiaries of the charge and naturally want to get as much as they can.

The witness is not able to segregate telephone and telegraph expenses so as to show what part of these charges represents advertising expenses and what part ordinary operating expenses. He reasserts his general belief that the Government should not interfere with business but that the commission business is one peculiarly requiring Government regulation and supervision because through their exchange they have a monopoly in assessing commission charges. This is even more true of the livestock commission business than of railroads, and patrons are absolutely powerless to protect themselves.

The American National Livestock Association differs from the Omaha Livestock Exchange in that the members of the former have but little, if anything, to say about the price at which they sell the livestock produced or fattened by them, while the members of the Livestock Exchange, at least up to the time of the passage of the Packers and Stockyards Act, possessed and exercised full authority over commission rates. If it were possible for producers to fix the prices at which their products sell, there would be many of them inclined to establish prices at a higher level than was warranted. In case certain functions of the Livestock Exchanges should in the future be exercised by the Government they would be performed without expense to the patrons of the market, whereas those same functions now exercised by the commission firms are charged against the shippers. After Government supervision becomes thoroughly understood by the shippers the work would be done with less expense than is now required under exchange supervision.

The expense incident to sending out the market paper increases the cost of commissions to those who do not care for the paper.

The witness did not have access to the information regarding the total net earnings of the firms on the market previous to its introduction into the record. He believes that under the schedule proposed by him those efficient firms doing an economical volume of business would continue to make a profit compensatory for their services, and that the inference is plain that those firms not doing an economic volume of business might not make enough to warrant them in continuing the business.

[fol. 280] If he conveyed the impression on his direct testimony that range cattle moved in the same volume as 20 or 25 years ago, the witness wants to correct that impression. The range has been cut up and those cattlemen dependent upon it do not have as large herds as they did formerly. There are many large outfits still left, such as the Matador Land and Cattle Co., but there are not as many large ones as formerly. The range cattle business has decreased in the last 15 or 20 years.

Recross-examination:

The witness did not know that a statement had been published 60 or 90 days ago that the commission men had filed an application for increased rates. Relative to Mr. Graham's opinion as expressed in his testimony, a letter from Mr. Graham to Mr. Stryker under date of February 22, 1923, was introduced into evidence, in which it is stated that so far as the Nebraska Stock Growers Association is concerned it had finished with the complaint about high commission charges and that it would cheerfully abide by the Gore-Dagger arbitration schedule. It is stated in this letter that the profits to the stock growers have reached the vanishing point and that it was natural to place upon those least responsible the blame for conditions. The witness states that after deliberation the stock growers of his association have reached the conclusion that the lowering of rates to a point which would bring about inefficient service would be a mistake. Under these circumstances the marketing end of the cattle business might perhaps be demoralized and not able to cope with those whose interests dictate that they buy at the lowest possible price.

The witness calls attention to the fact that the idea in Mr. Graham's letter is that he does not want charges reduced if it would mean inefficient service. He still believes that Mr. Graham would favor reduced charges. The witness thinks that the service under his reduced charges would be improved. He is of the opinion that the letter followed the Omaha conference between the committee of producers and that of the Exchange. Two other paragraphs are quoted expressing friendship between commission men and livestock producers and the hope of better harmony. The witness thinks that these paragraphs represent the feeling of a great many stockmen.

A letter from Mr. Stryker to Mr. Morrill under date of October 19, 1922, was introduced, containing the schedule of rates and charges submitted to the commission men operating on the Omaha market, as follows:

[fol. 281] "Cattle, to 60¢ per head, subject to minimum of $12.00 and a maximum of $15.00 per car.

And on carloads of mixed ownership, 70¢ per head, maximum $18.00 per car.

Calves, 30¢ per head, minimum $13.00 per car, maximum, $17.00 per car.

Sheep, single deck—$12.00; double deck—$18.00.

Hogs, 20¢ per head, single ownership; 25¢ mixed ownership. Carload lots, single deck, $12.00 per car; double deck $18.00 per car.

For buying cattle, $10.00 in straight cars, and $12.00 in mixed purchases."

In reply to these rates it was stated to be the opinion of the committee of commission men that any material downward change in rates would mean a reduction in service; that the reduction in service would cost the shippers more than the reduction would amount to; and that the reduction suggested by the committee of producers would mean such a radical curtailment of service that the committee representing the commission men could not consider it.

The testimony of the witness refers to the general conduct of the livestock commission business at all markets and refers also to that conducted at Omaha. A considerable portion of the experience of the witness occurred as far back as 15 to 20 years ago. Any particular changes that may have taken place in the method of marketing in the meantime, the witness knows only as he has been advised by stockers or shippers to the Omaha market. He has made no personal investigation of the Omaha market.

The witness believes that protests should not have any weight in a rate case unless backed by substantial statements and figures. He does not believe that protests are of any great probative value. He wants the case decided on its merits and believes that it will be. He states that his testimony reflects as nearly as he knows it the sentiment of the members of his association and his own sentiments, and that in some cases he is probably mistaken as to the sentiment of his members. He has no doubt that respondents could bring in a lot of shippers who could say they are satisfied with the rates.

The witness wishes his statement to be considered as a protest against the advances made in schedule No. 2, as well as a protest against the reasonableness of the entire commission schedule, and the reasonableness and fairness of the Gore-Dagger arbitration award. His statement aims to represent his own views and the views of the officers and

members of his association on various marketing problems directly correlated to commission charges.

[fol. 282] F. M. STEWART: Buffalo Gap, S. Dak. Secretary and Treasurer of the Western South Dakota Stock Growers Association since its organization in 1892. He is engaged in the livestock business—principally cattle—and handles some registered horses. The financial condition of the livestock industry is very bad in South Dakota. A major portion is broke, many having lost their cattle and land both. That condition has continued since the winter of 1919-20. He came to Omaha three times in 1922 to attend meetings where an attempt was made to adjust differences in commission rates, when a tentative agreement of $16 a car for cattle of one ownership was reached. This increase of $1 per car minimum and $2 per car maximum on straight carloads of cattle is not justified by the conditions in the livestock producing industry. The cattlemen of South Dakota ship their cattle to Sioux City, Omaha, and Chicago. He did not know of this increase until the 25th of March. There was considerable dissatisfaction with the rates arrived at in 1923, as many felt that the producers should have hung off for lower rates. The producers are disheartened at anything which increases the cost, regardless of how small it is. He wishes to enter a general protest against any increase in marketing expense.

Cross-examination:

He shipped livestock up until last year. Personally, he objects to paying this increase. There is no reason why the rate at Sioux City should be more for the performance of the service than at Omaha.

Redirect examination:

The rates at Sioux City and Omaha should be uniform and there should be no increase at either market.

FRANK W. ANDERSON: In the cattle order buying business at the Union Stock Yards, Omaha, Nebr. He has been

engaged in this business ten years at this market. Prior to that time he worked for different speculators in the yards as office man and salesman. He was never employed by a commission firm.

He handles fat cattle and stock cattle. Stock cattle are cattle going back to the country for feeding or grazing purposes. Last year he handled about a three million dollar business, which was pretty equally divided between stockers and feeders and killers. Stockers and feeders are bought for farmers and feeders from commission firms and traders in the Omaha yards. The feeder class of livestock is bought generally throughout the commission division of the yards by all firms. As soon as the cattle are bought they are allotted to whom they are to go, and they are picked up by [fol. 283] the firm, put in loads and billed out to the man who gets them. In making his purchases he buys the livestock as cheaply as possible. The factors taken into consideration in determining what they are going to pay for cattle are whether or not the cattle suit the order, and the price and condition. The commission man states his asking price first. The buyer has a general idea what the price ought to be from what the market has been and what the demand is, what the receipts are and the prospects. Sometimes the orders state a definite price, and sometimes it is left to the judgment of the order buyer. Fat cattle are weighed directly to the order buyer. This is done to avoid confusion in weighing the livestock. The order buyer takes charge of them after they are weighed to him and put in pens for him by the stockyard company. No definite pens are assigned to the order buyer. Very little sorting is done on fat cattle. Sometimes it is necessary to buy animals from different concerns in order to make up an order, in which case the firm must get them together in one pen. Sorting, if necessary, is done wherever it is convenient. After the load is in one or two bunches, it is not necessary for the firm to take possession of the livestock but can have it billed out without any further attention. Stockers and feeders are bought on order for traders and farmers. Frequently the feeder comes to the yards. Stockers and feeders are bought wherever they can be bought to the best advantage. This class, in a majority of cases, is bought from traders because the cattle are sorted up in

bunches of like kind and size and condition. When bought from traders, stockers and feeders are weighed direct to the order buyer, but when they are bought from the commission men, they are weighed to the firm. In such cases if any sorting is required, the cattle which are sorted are resold for the account of the man whose order is being filled. This is shown on the account purchase. Such livestock which is sorted out and sold for the producer's account is usually planted with a commission firm.

Cross-examination:

In stating that he bought for most of the firms the witness did not mean to include those firms which do not sell cattle. The tariff rate is charged for buying livestock. The joint tariff for buying is observed and no change in those rates was made. Witness is a member of the firm Frank Anderson & Son and is a respondent. He expressed the opinion that the raise in cattle commissions is justifiable and reasonable considering the service rendered.

Redirect examination:

By service rendered witness means that from his experience all commission men doing business in the stockyards are trying their level best to get as much as they can for their customers' shipments. From his observation this has [fol. 284] always been the case, and he has been in his present business for ten years. He is a member of the Omaha Live Stock Exchange.

William E. Fink (called by respondents-plaintiffs): In charge of the Division of Audits and Accounts of the Packers and Stockyards Administration; with the Administration since October 9, 1922. He arrived in Omaha on the Saturday before the first of March in advance of the arrival of Mr. Shortell. He was at the market continuously from that time until the hearing. He did not have supervision over the work of Mr. Shortell and the accountants and auditors and clerks who had been engaged in the preparation of the exhibits to be used at the hearing. In stating that he had not had this supervision he meant that

he had not checked any of the work. His particular duty had been to assist the various men in their work and keep them engaged. He is Mr. Shortell's superior and Mr. Shortell works under his instructions at all times. The form of audit to be prepared for this hearing was given out to the auditors sometime during the latter part of last year. Mr. Shortell had testified on the classification of the various items of expense. Witness did not recall having prepared any figures in the Washington office in connection with this hearing, except that he did summarize the quarterly reports for the first nine months of the year, 1925. He also had figures prepared from an audit for the period September 1, 1924, to September 1, 1925. That audit was prepared at the same time that the investigation and audit was being made at St. Louis. Witness did not know what information the Secretary had, which is referred to in the complaint and order of suspension. The witness stated that he did not think the audits necessarily connected up directly with the value of personal service. The value of such service is an economic question and beyond witness' power to determine.

Witness stated he was not familiar with market conditions at Omaha, and therefore was not able to state his opinion as he did in connection with the hearing at St. Louis. His position in the St. Louis case was that the value of the services of an employee was what he got for his services, that is from the standpoint of an accountant. From the standpoint of an accountant it was his opinion that the rate is an indication of the worth of a firm to its patrons. The salary of an employee-salesman is an indication of what he is worth from the standpoint of an accountant. Witness stated that he would not place a value on the services of an owner.

[fol. 285] The witness is a certified public accountant, licensed to practice in Kentucky and North Carolina. He was an instructor in accounting with St. Louis University for two years.

F. E. Mollin: Resides in Omaha and treasurer of the Kent-Burke Company, which is engaged in ranching, farming, feeding and trading in cattle and hogs, lumber, coal

business, and real estate. This company breeds hogs, but very few cattle. It gets most of its cattle from the Denver market, although it often picks up large bunches at country points from Wyoming, Colorado and New Mexico. A good many of them are shipped to the stock cattle ranch at Maxwell, Nebraska, and lesser numbers to the feed lot ranches which are in the eastern part of the state. The heavy cattle are sorted out every fall and shipped to the feed lots. In the last five years the company has been working with the sale of feeder cattle. The company markets very few feeders at Omaha. Most of the cattle marketed by this company at Omaha are fat cattle. The company raises on an average of about 1,000 pigs a year and buys light hogs in addition to the supply at the feed lots. The company also does quite a lot of shipping from Silver Creek, Nebraska. About one-third to one-half of the fat cattle purchased by this company is marketed at Omaha. Most of the hogs are marketed at Omaha. Kent-Burke Company keeps records of its operations with respect to the handling of feed and hogs. Witness has general charge of the bookkeeping.

Exhibit 85 is a statement of the net results of the feed yard business of Kent-Burke Company for the past three years. The year's business closes September 30th annually. In order to get the information for this exhibit an inventory of the material on the place is taken when the last cattle are shipped from any one of the six feeding plants of the company. Hogs are weighed up, and an inventory of the hay, grain and cotton meal is made. The results are all included in the cattle account and the hog account is also included in the cattle account. It is not possible to keep a separate account of the hogs, because they follow the cattle. Items of repairing and rebuilding are charged in the maintenance, on which interest, taxes and plant charge is made against the cattle. These and administrative expenses are not counted. There is an office at Omaha and one at Genoa, Nebraska. When cattle are removed from the western ranches to the feed lots, their value is determined by the observation of the market and also the cost of cattle being purchased at the same time in Denver. The feeder cattle are charged to the feed lot at

a comparative market price. On the exhibit are given the figures for the six feeding ranches for which there is a [fol. 286] separate account kept.

Witness has been with the Kent-Burke Company for 20 years and has been treasurer for the past eight or ten years.

If cattle are bought as yearlings they are usually kept on the western ranches for two years, and if bought as two years they are ordinarily kept only one year. It is the policy to ship three year old cattle to the feed yards. On the western ranches the cattle are run on the grass in the summer and on hat in the winter. During recent years when the cattle are moved from the western ranches to the feed lots 1,000-lb. steers have been worth from 6½¢ to 7¢ a pound. They are easily worth about $40.00 a head when they are bought for the western ranches. Three year old cattle will stay in the feed lots ordinarily from four to seven months. Light yearlings when they are fed are kept in the feed lots from seven to eight months. The older steers during the past winter have been worth from $100.00 to $125.00 a head when they go to market from the feed lots. Yearlings have been worth about $75.00 a head. All of the cattle shown in Exhibit 85 are fat cattle.

Very few hogs are shipped in from the western ranches to the feed lots. They are produced at each of the feed lots and some are bought locally. The hogs are generally kept about a year before they are sold. Hogs bought are easily kept about six or seven months. The exhibit shows the total number of hogs shipped, and this includes some hogs shipped after the feed lots are closed. The average value of a hog at the present time is from $25.00 to $30.00 a head. During the year 1925 they were worth perhaps $5.00 a head less at least.

Witness has during his time with the Kent-Burke Company engaged in office work, sorting and driving both cattle and hogs, making frequent trips to the ranches and frequent trips to the market when the company has cattle or hogs on the market. In the summer and fall he goes to the feeder ranches and assists in sorting and grading cattle and pressing them to buyers. He assists in the selection

of fat cattle at the Omaha market. Cattle shipped to market are sorted by him or the ranch manager, so that there will be as nearly as possible only one grade in a car. This eliminates sorting when the cattle arrive at the market. The hogs shipped out of the feed lots require very little sorting. The hogs that are bought and shipped by the company require more sorting.

[fol. 287] Witness is quite familiar with the Omaha market, as he has to go down to the yards every time the company has cattle to market. He observes the manner of handling and marketing the cattle and hogs at the Omaha Stock Yards. The witness states the company consigns livestock to old line commission firms and is familiar with the way in which the livestock is handled and sold. In the opinion of the witness the statement in Exhibit 85 fairly represents the general feeding conditions in the territory in which this company operates. The company has six feed lots and ranches located with reference to railroad stations, and is in a position to operate about as economically as any company in that territory. The Kent-Burke Company carries a risk on the livestock from the time it receives it until it is sold on the Omaha Yards, unless there is negligence on the part of some one who handles it. Oftentimes the company can collect for loss on livestock which dies in transit.

The company has a $500,000 invested capital, which is fully paid up. It always borrows large sums of money. The statement in Exhibit 85 includes the expense for interest on borrowed capital. Owing to the severe losses in the last three years the capital has shrunk perhaps $50,000. Considering the value of the plant and the amount of money invested in capital, more than half of the capital stock would represent investment in the production of livestock. At times more than the full amount of the capital stock is invested in the feeding plant and the cattle.

Upon examining Tariff No. 2, witness stated that he had formed an opinion as to the reasonableness of the various schedules therein, leaving out of consideration for the moment the question as to whether the tariff is too high. In recent years the company has shipped livestock to Rosenbaum Brothers & Company, Wood Bros. & Company, Burke-Rickley Commission Company and some other firms. Wit-

ness has found very little difference in the manner and method of handling livestock and marketing it by these three firms.

Witness' first objection to the cattle schedule is the raising of the maximum to $21.00, which would include a good many of the western range cattle and a great many of the fat yearlings from the corn belt. Nearly every car of hogs will sell at the maximum of $14.00, and the spread between the maximum on a car of hogs and a car of cattle is too great. He also stated that the commission on carload shipments was out of proportion to the commission on drive-ins. Witness states that he has observed the handling of [fol. 288] drive-ins and has discussed the business with some of the commission firms who have expressed the view that they do not get sufficient spread between the selling of straight carloads and the selling of small bunches, and the new schedule does not change the rate on drive-ins. Witness stated that his opinion was not based entirely upon what he was told by commission men, but was based on his knowledge and experience of the livestock business.

Witness also stated that the arbitration award had recognized the difference between per head rates on drive-ins and carload receipts. Witness stated that he had seen livestock arrive by truck, move to a regular cattle division and there be exposed for sale.

A car of fat matured cattle shipped by this company contains from 20 to 23 head. A car of fat yearlings will hold from 25 to 30 head. Sometimes the company ships fat heifers and veal calves mixed, and it is easy to load 25 fat heifers and 4 or 5 calves in a car. Witness did not recall ever having shipped less than 18 cattle to a car. Under the new tariff 18 cattle in a car will be charged a commission of $16, while the same number driven in will be charged a commission of only $14.40. There should be no difference between the commissions in such cases.

Witness criticized the increase on hogs by lowering the minimum weight to 16,500 lbs. The hogs shipped by his company ordinarily weigh 17,000 lbs. or more per car. The service rendered is no different on a car of hogs where the weight is over 17,000 lbs. and cars where the weight is only 16,500 lbs. A car of 43 hogs weighing 17,000 lbs. would pay $12.30, while the same number driven in would pay

only $12.04 commission. The weight minimum in the carload section of the schedule is 16,500 lbs., while in the drive-in section it is 17,000 lbs. On 40 head of hogs arriving in a car the commission would be $12, while on the same number driven in it would be $11.20. This is an extreme case. As few as 40 is seldom shipped in a carload.

The proposed schedule is more poorly balanced than the old schedule. In the opinion of the witness the special provision for cattle and calves should be excluded from the mixed livestock schedule—that is, when a car contains only cattle and calves, the commissions should be figured under section 1. The reason for this is because they go to the same division of the yards and are the same species of livestock. A car of heifers shipped by the company ordi- [fol. 289] narily takes somewhere between the minimum and maximum commission charge. The average car of heifers and calves would take close to the maximum, and a good many of them would probably take the maximum.

The witness collaborated with Mr. Tomlinson in preparing Exhibit 84, being the schedule of rates proposed by Mr. Tomlinson as being reasonable. They talked over all the provisions of cattle and hogs applying to different schedules. Mr. Tomlinson had his own ideas as to single ownership carload lots which are shown on the schedule, but they talked over the special provision in the other schedule, particularly applying to cattle and hogs. Witness believes that the spread between cattle and hogs as proposed in this schedule is not sufficiently great. He does not believe that $2 a car is a sufficient difference to make between the average carload of hogs and the average carload of cattle. The witness regards the present schedule now in effect as providing for too great a spread between cattle and hogs. In his opinion the spread should be at least $3 a car. He did not testify as to sheep but as to cattle and hogs, and he thinks that with the one exception the schedule proposed in Exhibit No. 84 is just and reasonable.

If the business was not overmanned and there was not so much money spent in advertising and soliciting, which in a way represents taking the business away from each other, the rates proposed in Exhibit 84 as corrected in accordance with the witness' suggestions would make the commission men an ample return for their services. The

schedule should be simplified; the present one is unwieldy. It is difficult for the shipper even to figure what the commissions ought to be from the present schedule. The witness checks over the account sales very closely and experiences some difficulty in applying the schedule.

In widening the spread between cattle and hogs in Exhibit 84 witness believes that the rate on hogs should be lowered. The hog schedule should be $1 a car less. During the feeding period in 1925 the Kent-Burke Company had an average number of cattle on feed of from 1,500 to 2,000 head. In addition to the capital of the company, the owners loaned to the company between $150,000 and $200,000, which is used in its general business. The great bulk of feedlot cattle shipped by this company requires very little sorting. Perhaps 25 per cent of the shipments of cattle would require some sorting. Witness does not regard the cutting out of one animal to sell as any great amount of sorting. In such cases they are often sold out of the same pens at a different price and not regarded sorted until they go to the scales. Excluding the sorting out of a single [fol. 290] head, the witness estimates that the percentage of sorting of cattle would — only about 15 or 20 per cent.

The plural ownership as provided in Exhibit 84 was pretty generous. It would give the commission firm a return commensurate with the extra service. No extra service charge is provided for other than prorating in this schedule because the charge per head had been fixed at a price which, *in price which,* in their opinion, includes the compensation for extra services. It was arranged this way in order that the schedule might be simplified.

The witness has given consideration to whether a percentage basis for commission rates should be charged and is of the opinion that it should not be. The reason for this is, he believes, that the charge should be according to the value of the service rendered and not the value of the product sold. The percentage basis would not give consideration to the labor and expense of the commission firm involved in the handling and selling of livestock.

The witness has formed an opinion satisfactory to himself as to the number of cars of cattle or hogs which the reasonably efficient cattle or hog salesman, as the case may be, can handle and sell efficiently in a year. He is

familiar with the way in which cattle arrive, the manner in which they are yarded in the pens, the manner in which the various firms sort and show cattle, the manner in which the firms to which he ships offer the cattle for sale, the manner in which the receipts of cattle fluctuate from day to day, week to week, and from month to month, and the general activities of the cattle salesmen handling and selling cattle. In the opinion of the witness a salesman could easily handle from 3,500 to 5,000 cars of cattle a year—he means cattle of all the various kinds that come to the firms with which he is familiar. Having the same degree of familiarity with the selling of hogs, it is the opinion of the witness that the hog salesman can sell from 2,500 to 3,500 cars per year. There has been no increase in the amount of sorting or livestock shipped by the Kent-Burke Company during the past five years.

Cross-examination:

In stating the number of cars of cattle that a salesman could sell witness was thinking of any good average salesman. He regards Mr. Munson, of Wood Bros., a good average salesman but does not know how many cars of cattle Mr. Munson sold last year. Witness has been in its yards when the firm had around 40 to 50 cars of cattle, and he presumes that Mr. Munson sold the bulk of them, but [fol. 291] he does not know how many he actually sold on any one day last year. He has never had any conversation with Mr. Munson as to how many he could sell.

In making his estimate as to the number of cars a salesman could handle in a year, witness had in mind the sort of market that runs along during the course of a year. He thinks a salesman could sell 15 cars of cattle a day. He took into consideration the fact that the salesman is to get the worth of the cattle. In making his estimate of the number of hogs a salesman could handle he was thinking of E. D. Smith and Bill Royce. All that a salesman can do on a draggy market is to sit around until the buyers get ready to buy. He would not sell them while he was sitting around, but he would sell all in a bunch usually when the buyers finally decided to take a look. Witness has observed the market a good many times when the market was draggy, and the buyers sit around on the fence often until ten or eleven o'clock; and then when they do come out, they

get their orders and buy freely at lower prices. In event of a very bad market when he is around, the hog salesman will consult him on the price he should take on his hogs. In extreme cases they have had the salesman hold their hogs over, but they do this very seldom. Witness figures roughly on 300 market days but realizes that there are light receipts on Saturdays.

The yardman sells Rosenbaum's drive-in hogs. Smithy sell- Wood Bros. drive-in hogs. Witness has never seen either one sell hogs in the drive-in division. Witness has assisted in the buying and selling of real estate in connection with his duties in the Kent-Burke Company.

The reason that some of the cattle shown in Exhibit 85 lost money and some made money was that the cattle from the Silver Creek place happened to get the high price and the ones that were fed late hit a bad market and lost money. The first cattle listed under 1924 in this exhibit were yearlings which came from Denver, and the other cattle partly from the company's ranch at Maxwell. The company seldom ever tries to buy cattle at the Omaha market unless the stocker market is down. The natural place to buy feeder cattle is in the west so that the company can get feed in transit billing. The company does some speculating in cattle in the Silver Creek operations. It is impossible to tell whether any profit was made on these in 1925 because cattle suitable for the feed yards were charged into the feed yards at cost, and it is impossible to preserve [fol. 292] the identity of those cattle. The cattle which are bought and shipped are kept in a separate account called the "Lee Place stock cattle account." The company makes a modest profit on this business. Very few full carload shipments of cattle are made from that point. Ordinarily the company ships cows and bulls mixed with hogs. Witness considers $50 would be a good profit. In 1925 the company probably made $2,000 or $2,500 profit on cattle and hogs bought and shipped. Owing to the fact that a great deal of stuff is sold locally, it would be difficult to estimate the number of cars of business of this kind done during 1925. The company probably handles between 25 and 50 cars, but some of the profit is made on transactions at home. The cattle bought are usually delivered right to the ranch where they are held until they are shipped. No charge is made against them on the records for pasturage

in summer time, but the company has a system of charging hay and feed in the winter. If the cattle are bought in sufficient number, the foreman will often go after them.

In Exhibit 85 a charge of $5 a head was made against mature animals for interest, taxes, and yardage and $4 against yearlings. That is low.

As to whether the witness in stating the spread between species was too great took into consideration the cost of selling and the value of service to the owner, he stated that he was considering from the standpoint of a representative firm and was not confined to the particular three firms to which his company ships. He had in mind the representative firms' being the average firm doing business on the yards. A representative firm would be a good firm with a good, fair volume of business with a full force of salemen. A firm handling 10 to 20 cars of cattle a day would be doing a good volume of business. He had seen firms on the market with more than that number and some with less. In certain seasons of the year his company is represented on the market very seldom. At other times they are there three times a week and sometimes only once every two weeks. The witness himself is away from the yards from the first of July to the first of October on account of putting in a large amount of time at the yards. In arriving at the spread between cattle and hogs he has always considered that there was quite a difference in selling a car of hogs from selling an average car of cattle. In the case of his company the cattle require more sorting than the hogs. Sometimes the cattle will go part to the steer alley and part to the other alley.

[fol. 293] As to whether witness has the same criticism to make of freight rates, he stated that there was not a great deal of difference in his territory because a different rate and different minimum is applied in each case. Witness could not place a value on the service of Mr. Munson but believes that the Secretary, in determining a fair charge for the service of selling livestock, has to take into consideration the question of the value of the different classes of salesmen. He thinks the Secretary has to consider the services that a salesman renders to the shippers. The rates should be set so that a sufficient number of firms could receive and handle the volume of livestock at this market efficiently and get a fair remuneration for their services.

If the receipts of livestock at the market were to be cut down 25 to 50 per cent, he does not think that the same number of people could expect to make a living from that business. The company always feeds some cattle, but the number fed depends upon conditions. It is impossible to tell now what the operations will be this fall. This will depend somewhat upon the corn crop. It is expected that receipts will vary at the market, but when receipts are increasing, the number of commission firms increases. They cannot go on that way forever. You cannot just keep raising commissions and get enough livestock to supply all these people unless the business will justify.

Witness at this point was interrupted to permit witness Burke to testify.

In a general way Mr. Mollin concurs with Mr. Burke's statements in his testimony. His idea about economies in administration in the commission business would be that there might be big savings in advertising, that firms could consolidate and still absorb most of the balance in the consolidated firms and cut out a considerable amount of overhead in the office and in the advertising, which might enable them to accept the lower commissions and still make a fair return. If the rates were reduced, the commission men would have to do the same thing as producers when revenues are reduced; they would have to seek economies, and the natural source of such economies is to return to consolidation. Witness has observed where firms that used to be united have divided and each man is running a firm of his own.

Witness is convinced that all these segregations and new firms starting by branching off from bigger firms have not been in the interest of the people directly affected. The [fol. 294] money spent in taking business away from other firms is an economic loss to the producers. The reasons are expenses for advertising have increased, there are more firms in the business, and they have to spend this money so that each may try to get his share of the business. There have been several new firms started up in the last two years, and witness knows of very few withdrawals. If the rates proposed, or those found reasonable by the Secretary, would result in putting out of business, or causing a consolidation of the firms with which his company does

business, witness says that he would feel sorry but yet does not feel that he ought to pay them more commission just to keep them in business.

Before leaving the stand witness asked to make a slight correction in his previous testimony. In giving his opinion as to the number of cars of livestock which a salesman could handle, he stated that he did not give as much weight to the variation in volume as further reflection indicated he should have given. Mature reflection led the witness to believe that there are nearer 200 real active market days in the cattle yards in a year than 250 or 300 as he had previously figured. He stated that he would reduce the volume of cattle handled by one salesman, including mixed shipments, to 2,000 or 3,000 cars a year.

The witness concurs with Mr. Burke in what he had to say about Mr. Munson and thinks that the things which Mr. Burke named should be taken into consideration by the Secretary.

Witness did not change his estimate of the number of cars of hogs that a hog salesman can handle, because there are approximately 300 market days for hogs.

Redirect examination:

His company does not hold over livestock because, in his opinion, it results in a loss 90 per cent of the time. As a rule they obtain more net for their livestock by selling it the day it arrives than by holding it over. It is the witness' opinion that if there were fewer firms on the market it might tend to have some effect in stabilizing receipts between firms. His company sells and buys stock cattle at the Omaha market, and when it does, they are usually bought out of second hands. This is ordinarily the time when the speculators have become loaded and are having a bargain sale. The bulk of the business is done through speculators because they are on the job before any one else is around, and the first man gets the first chance.

Recross-examination:

As to whether the Kent-Burke Company would be influenced to ship to Chicago rather than Omaha because of the difference in the rate of commissions, witness stated [fol. 295] that if the conditions at both places were other-

wise equal, his company would ship to the market that had the least commission charge. Commission charges are one factor to be considered in determining which market to select. The difference between the new schedule and the old schedule does not amount to much when reduced to price per hundred but does amount to considerable when considered in light of the volume of business handled by the Kent-Burke Company.

E. L. BURKE: Resides in Omaha, Nebr., and is president of Kent-Burke Company, which is engaged in land and livestock business, and of which Mr. Mollin is treasurer. Kent-Burke Company has been a corporation since 1910 and operated as a partnership up to that time since 1888. Since 1888 he has been engaged in the business of producing and marketing cattle and hogs. For 10 or 12 years he has been vice president of the American National Live Stock Association.

Witness stated that he wished to make a general statement in regard to the Omaha Live Stock Exchange Tariff No. 2, and he stated that his views were his own views, the views of Kent-Burke Company, and the position of the American National Live Stock Association, its officers and executive committee. The livestock industry is in a very precarious condition, and this case involves the prosperity or the lack of prosperity of the livestock industry. In order to restore prosperity in the livestock industry, it is necessary that all uneconomic and unnecessary charges levied against the industry should be eliminated. This case involves unnecessary and uneconomical charges. Witness stated that he considered Mr. Tomlinson's experience and ability qualified him to make sound recommendations with reference to schedules of rates that would be fair to the producers and the public and ultimately the commission men themselves. The views expressed by Mr. Tomlinson represent the views of the officers and the executive committee, the membership of the American National Live Stock Association, and in general the views of the livestock producers throughout the entire western country. An increase in commission rates will result in increasing the number of commission men in the business, which is

already badly overdone and overmanned. The result is to discourage and drive away young men from the farms because they find it difficult to make a living on the farm and get a fair return for their labor and investment. In his opinion, an increase in commission charges will result in a decreased volume of business because it would tend to discourage production and would turn livestock away from the markets. This increase will result in a decreased efficiency and increase economic waste because it would result in further overmanning the business. A decrease in [fol. 296] commission charges will result in an increased volume of business *be* encouraging more cattle to come to the markets, on the theory that the charges are less, and would also result in increased efficiency since a greater volume of business could be performed by fewer men.

Witness was also of the opinion that the increase in commission charges might also have some bearing on the rentals which the commission men may be asked to pay by the stockyard company for their offices in the new Exchange Building.

Cross-examination:

The Live Stock Exchange and the producers should resist any increase in the rentals because of the new Exchange Building. The producers were not making a demand for a building of that kind. The Packers and Stockyards Administration should pass on the increase in rentals. Witness does not understand that the livestock commission men want to increase the rentals.

As to uneconomic and unnecessary charges the views of the witness coincide with those of Mr. Tomlinson. By economic charges is meant that the charges are based on economic volume of business performed efficiently, and any charges that are made on any other basis are uneconomic. By "performed efficiently" it is meant to protect the producer's interest and at the same time get a reasonable and fair return for the man who is doing the work as a commission man. When his company ships a car of livestock to market for sale the principal object is to get the greatest possible return of money for that livestock. Witness would not expect to get such a high rate for the producer that the other factors in the transaction were not treated fairly.

He did not ask the commission man to sell livestock for nothing. All the commission man can do is to do everything in his power to get the highest possible price for the producer, but if the buyer is able to buy livestock for less than it is worth, the commission man hasn't any power to protect the shipper. The commission man has to sell for what he can get. The object of the livestock commission men is to convert livestock into cash. In order to do that it is necessary for a livestock commission firm to have in its employ men thoroughly qualified to transact the business. The matter of handling in and at the yard is of secondary value to the livestock producer to actual judgment as to what the livestock is worth and to sell it. The question of the value of the service so far as the commission man is concerned and so far as the shipper is concerned is the ultimate determination by the Secretary of what this service is worth, what the experience of the livestock commission industry is worth when devoted to the work of converting livestock into cash and the necessary incidental expenses. The Secretary should take into con- [fol. 297] sideration the financial status of the producers, but that is only one of many factors. It is not a matter of dollars and cents involved, but the principle. It would be but a short time until another raise would be made and perhaps encourage the stockyard people and the packers to take more with impunity. The making of a raise arbitrarily without the producer's having any voice in the matter is tremendously discouraging to the livestock industry. If this increase can be prevented, it will encourage and hearten the livestock men of the west, as they would feel that they are having some voice in the way the business at the market is being conducted.

During the war Mr. Burke was chairman of the Livestock Committee under Mr. Wattles, who was food administrator for Nebraska. In 1917 as chairman of this committee the witness had some connection with the matter of commission rates at the South Omaha market. The advance in commission rates was proposed, but due to the solicitation of Mr. Burke, on the 5th day of October, 1917, the rule providing for the increase was suspended. Witness does not know how much patriotic motives and how much the force of public opinion may have had to do with

the action of the Exchange in withdrawing the tariff at that time.

Witness was not able to state how many men he thinks will desert the farms and go to the city as a result of this particular increase. It is not practical to determine that. It is part of the very much smaller question. Of the half million men who left the farms in 1925 witness is not able to state how many of them went into the commission business. If the decrease in the number engaged in the pursuit resulted in a decrease in the production of livestock, it would result in a benefit to those who are left. Witness states that he is not only concerned with those who are left in the business but is concerned with the welfare of the livestock producers as a whole. While it is a question of the survival of the fittest, yet he would like to see the field open for the livestock producers who are now in the business and even widen it so that more men could make an honest living and get a fair return from the business. In his opinion it is for the welfare of the country that that should be the case.

In so far as consistent and is economically possible and sound the cost of production should be decreased. This particular raise in rates in itself is of no particular consequence, but the principle involved is of still greater consequence. It is impossible to tell just how much this particular raise will affect the prosperity of the stockmen. The business of his company is not on a paying basis, and it cannot afford to pay the increased charges. Assuming that the increase averages $1 a car and the 1925 business [fol. 298] was about 110,000 cars, the aggregate increase would be about $110,000. In regard to his own business he knows about the average number of cars produced over a series of years and assumes that the business during the coming year will be somewhere near the average. This increase will have the tendency to still further increase the number of firms at the market. In the opinion of the witness there has been an increase of about two firms a year during the last four years. After you have reached a certain point, the more men you have to handle the business the more uneconomic and less efficient the transactions. Any charge that may be added to the commissions means that it must be paid by the producer, and this is no time to either reduce the return to the producer or the cost to the

consumer. Primarily this increased charge will be borne by the producer, and the producer will not be able to pass it on to the packer in the shape of higher prices.

The lowering of the commission charges will result in the elimination of the weaker firms. By weaker firms is not meant the smaller ones but rather the most uneconomically managed and handled in every way. By economic management in the commission business is meant handling an economic volume of business in an efficient manner. Witness stated that in speaking of economic management he was speaking purely theoretically and presumed as a manner of actual practice that there are a number of firms on the market who have an economic volume of business and are handling it efficiently. Witness has no particular firm in mind but perhaps the firm to which his company ships is one of those firms.

There are a number of factors which enter into the selection of a commission firm by the shipper. Witness has been in the business a great many years and has formed a great many friendships. The bond is very strong between the livestock producers and their commissionmen. His company would stand quite a lot of inefficiency before it would sever relations with a firm with whom it has been doing business for 31 years. Economic volume of business and efficiency are more or less relative. Witness does not mean to be understood as meaning that the same people who are now doing an economic business in an efficient manner could not with the same equipment that they now have still do a considerably larger volume. In the decrease of the number of commission men the others would naturally get their proportion of the business abandoned by the people who leave, and in that way their profits would be [fol. 299] perhaps even larger than they are now, even though they are selling stock for less money. Perhaps 30 or 40 firms could do the same volume of business that is now done by 60. They could still sell the stock at considerably lower figure and make more money than they are now making.

Other people make their selection of firms largely for the same reasons that Kent & Burke makes its selection. Witness does not believe that the receipts can be distributed equitably to the efficient firms. He does believe that the

number of commission firms can be reduced by a reduction in commissions and the situation will take care of itself by the survival of the fittest without any effort on the part of the Government and without any action on the part of the Exchange. The situation will work itself out to the best interests of both the Exchange and the producers.

Witness does not believe that any man's business should be confiscated unless he has in some way violated business ethics or violated the law. However, if any man or set of men through their Exchange or union or any organization which they set up are imposing on another class of citizens unfair and unreasonable charges, it is perfectly proper for the Government to step in and regulate those charges in such a way that they shall be fairly reasonable to bring an adequate return only in case of the concerns doing an economic volume of business in an efficient manner. Unless the business increases, the recommendation made will have the natural result of eliminating people now engaged in business at the yards. Witness states that they have recommended a rate and if that rate should result in a third of the people who are in business going out of business, they still recommend it. If the commission firms cannot make a living and are not satisfied with those rates, they will have to merge their concerns, or arrange so that the business can be done more economically, or they will have to retire. It does not necessarily mean that these men will have to go out of business; they may combine their business in such a way that it can be handled much more economically. It is his opinion that the adoption of the schedule recommended will result in fewer people being engaged in this business. The principle is sound that if a man is engaged in an uneconomic business he should get out and get into something that is sound and economical. This principle is the same with respect to the number of men that raise livestock, wheat and oats. As to whether the Government should have the power to do this witness states that the situation between the producers and the commission men is not comparable. If the producers had an organization similar to the livestock exchange through which they dictated the prices which the consumer should pay or [fol. 300] the packer should pay, I should say by all means it was perfectly proper for the Government to step in and

in just the way we are proposing here lay down a fair price, and if the producers could not meet the price, then they would have to get out.

The factors that ought to be taken into consideration in fixing a fair price on Mr. Munson's services are his wonderful personality, his industry, his integrity, his technical skill as a salesman, and his standing with the buyers. He is one of the outstanding men down here. Any person similarly placed ought to have the same consideration at the market. All those things should be taken into consideration in his worth to the firm. Whatever makes him worth more to us makes him worth more to his firm. Mr. Munson has a very large personal clientele, and that is a large factor in determining a man's worth.

T. S. GILL: Trader in the Omaha Union Stockyards, registered under the Packers and Stockyards Act. He deals only in sheep. He has dealt in sheep for about 18 years, though not all of that time as a trader. For 12 years he was buyer for the Cudahy Packing Company. He handles all classes of sheep, including stockers and feeders and fat sheep. In 1925 he did about a million dollar business. Handled more feeders than stockers and bought feeders from all commission merchants who handle sheep. He buys some fat stock to fill orders but no feeders for that purpose. In the fall a definite part of the sheep division in the yards is assigned for his use. This occurs only in the fall for the reason that it is only then that there is a regular sheep trader division. During the rest of the year he handles his sheep any place around the yards. The sheep business is heavier in the fall than at any other time. Some of the sheep he buys he sends to his fed lots and some he ships back and sells on the market the next day. He sells some feeder sheep direct to commission men and some direct to the feeders. This class of sheep is bought by him both for his own lots and to resell to countrymen.

When he purchases feeder sheep in the fall he takes them after they are weighed to his part of the sheep division and sometimes sorts them there. It is necessary to sort to

meet the demands of buyers from the country who ordinarily are looking for some particular classes and weight of sheep.

He does not fill country orders direct or charge a commission. The sheep are weighed to the commission men or feeder buyer after such purchaser is through sorting whatever he desires to sort out. It is not always possible for dealers to sort sheep to suit the buyer. When they are [fol. 301] weighed to the purchaser the dealer's responsibility is ended. Probably half of the stocker and feeder sheep he handles are sold directly to countrymen and the other half through the agency of commission firms.

The killing class of sheep are bought generally from commission firms and handled generally in the same way as stockers and feeders, though not exactly so, because it may be necessary to buy six lots of fat sheep in order to sort out three to fill orders calling for certain weights. His firm has some standing orders for this class of sheep but mostly they are bought on special orders, which usually specify the particular weight desired. The sheep remaining after the special order has been sorted out are placed sometimes with the commission men to sell and sometimes the witness tries to sell them directly to the packers.

Sheep that are bought for order are taken to the scales by the dealer's employes but the dealer's responsibility does not end until they are accepted in New York. In weighing out such sheep he makes a billing and takes it to the stockyards company to put the yardage on it. From 20 or 25 to 40 per cent of the sheep he buys for the purpose of filling orders go back to be sold on the yards. He turns these sheep over to commission men to sell because the packers do not like to buy his sorts and that is called "planting." A very small proportion of fat sheep is sold by "planting" rather than directly. There is a very little planting outside of that done by the witness' firm and they sell quite a little bit directly to the packers. From year to year he has handled about the same volume as during 1925. As a general rule he is not able to buy straight either feeder or killing sheep which will suit his orders. This necessitates sorting by him after the sheep are purchased.

Cross-examination:

When a commission firm sold sheep for him he paid them a commission and thought that he got his money's worth. He could sell the sheep himself or turn them over to the commission firm but preferred to pay the commission rather than sell for himself. He does not believe that he was charged an unreasonable rate. He is familiar with the sheep rates on the Omaha market, has shipped many sheep to that market from the country, believes that the commission is the cheapest part of the expense and does not think that the commission men charged too much or the shipper pays too much for the service rendered. He is a member of the Omaha Live Stock Exchange.

M. C. WILKERSON: Member of the firm of Tagg Brothers [fol. 302] & Moorhead; sheep salesman for that firm and has been a sheep salesman since 1907. Prior to that time he was a buyer for Swarzchild and Sulzberger. His firm handles any class of sheep that is shipped to it, including stockers and feeders and fat sheep.

Sheep receipts at the Omaha market are seasonal, there being the range season starting about June 1 and continuing until the last of October. The fed season begins at the close of the range season and continues until the range season is about to reopen. The general understanding of the term native sheep is sheep that are raised in farm communities, usually in small droves. They may class either as fat or thin native sheep. The greater percentage of sheep received at the Omaha market are the kind known as western and distinguished from native sheep. Some of the western sheep have more or less fat and are ready for sale to the packers, others go back to the country for further feeding and finishing. The witness sells all the sheep handled by his firm.

His firm gets in touch with consignments of range sheep as they arrive at the feed stations. The feed stations for the Omaha market are Valley, Fremont and Lincoln. Frequently he goes out to feed stations, examines the sheep consigned to his firm and decides how they are to be handled and what days they are to be ordered into the market. He

orders them in as he deems best for the shipper and handles them to the best advantage. If it is a big consignment he probably would distribute them over two or three market days. When they arrive on the Omaha yards he classifies them as to feeders and fat sheep, so as to facilitate their sale when the market develops. Frequently he grades them in their classification before he even attempts to show them to the trade. He may sort them at the feeding station or in the Omaha stockyards, depending on the particular shipment and which course will work to better advantage. If the sorting can be done at a week-end it is done at the feed stations but if — must be accomplished during the market day it is done at the stockyards. However, he prefers to avoid, as far as possible, sorting in the stockyards so that he may "get clear action on the market."

Practically all western sheep are sent to the feed-stations on their way to the market. A large percentage of them is consigned to commission firms direct. Some shippers bill to themselves and turn the sheep over to commission firms at the feeding station but the great majority are consigned direct, and frequently the witness' firm assumes responsibility for the sheep upon their arriving at the feeding sta- [fol. 303] tion, they not being accompanied by the shipper. In such cases sheep are consigned to the firm to be handled to the best advantage and the firm uses its judgment as to when they should be "eased" into the market.

After he had been out to the feeding station, sorted the sheep and they had been shipped to his firm at the Omaha yards, they would be taken to the firm's pens and subjected to such further sorting as he deemed necessary, depending upon how the market price should improve as the day develops. He then takes a buyer in to the sheep, prices them and sells them to the buyer, either in whole or part, according to his judgment as to the state of the market. When the trade is consummated he either sorts or permits the buyer to sort, according to the terms of the contract. Then the sheep are taken to the scales and weighed to the buyer, whoever he may be.

The witness himself does most of the work of sorting and so far as the fat classification is concerned, he does practically all of it, including the manual labor connected with it. However, certain classes of the sorting is done by

employees, such as yardmen. For instance, any general yardman who has any training in the yards can classify ewes from lambs or sheep from lambs but when it comes to a question of judgment as to whether a certain animal should be classified as a feeder or breeder or matters of that kind the witness prefers to take care of it himself, because he thinks that is where the money is involved and the best interest of the shipper may be served. The sorting is done both at the feeding station and at the Union Stockyards.

The feeding stations are not used in connection with shipments of native sheep that come direct to the yards. A small native shipment requires much more sorting, considering the number involved, because the firm's consignments frequently contain a few ewes, a few lambs and a few thin sheep and require more classification and more sales than range sheep, though they do not involve more money. The yardman does more or less of this type of sorting and as much of that work as possible is done before the witness gets on the ground.

The official time for opening the sheep market is 8:00 o'clock and that is the time it is supposed to open but it may not open without two or three hours unless some one is willing to buy sooner.

Considerably more western sheep arrive in double decks than in single because otherwise the railroad rates would be prohibitive. More native sheep come in single than double decks.

[fol. 304] Omaha is a five day market on sheep. Frequently some days are heavier than others. The first of the week, particularly in regard to the western movement and even during the fed movement from a distance, is heavier. Monday being usually the heaviest day because sheep for sale on that day accumulate at the feed stations from Thursday afternoon on, there being no Saturday market. Sheep arriving at the feed stations Thursday cannot be moved until Sunday night for Monday's market. Usually the stop at the feed stations is short, the sheep being marketed within two or three days and sometimes during the range season they come direct to the stockyards, though during the fed season some sheep are held at the stations to be fed out or for a little further finish. Most of the sheep from the feed stations come to the stockyards by railroad.

Practically every day his firm gets some sheep that are brought in by truck. To a large extent he sells these himself though he has assistants who sell some consignments. Truck consignments are unloaded at the truck division, his men yard them in the pens assigned to his firm and they are classified and sold from those pens. Other than going to the truck division and driving the sheep to his firm's pens, truck consignments are handled like any other.

In case a lot of native sheep is so small that they may be classified and pointed out easily they may all be sold in the same pen and sorted afterwards. His firm does not handle very many plural ownership consignments of sheep, a very small proportion of their sheep are plural. As a rule such sheep are all different brands and are kept separate so as to be easily identified in the yards. When a plural ownership consignment is of any considerable number his firm sorts out the ownership and classifies them befor the sale. In such instance they are sold as undivided consignments of sheep just as though there were no other sheep in connection with them. Eventually he has to place the different ownerships in different pens and he generally does it before the sale. The man who takes the sheep to the scales to be weighed sorts them as he passes them on to the scales just to save time.

Sheep of the same class but different ownerships might be offered for sale together where by so doing they show to better advantage, in which case the buyer is given to understand that they are of different ownership and will have to be sorted and weighed separately. In such instance a separate scale ticket is made to cover each owner's sheep. To clarify the foregoing the witness made the following statement:

"Frequently in a bunch of feeder lambs, for instance, a western consignment shipment might have a feeder in [fol. 305] the fat end. If I was going to show that consignment to a farmer buyer, for instance, and had twenty-five lambs here and fifty here, seventy-five lambs practically all the same classification and trying to sell them to him as a single deck, I might have harder work convincing him what I was trying to get across than I would by sorting them for ownership after the sale was made. It would

simply be a matter of my judgment to get the best advantage for my shipper."

He would not handle the matter in the same way every day. For instance, if he had a lot shipment and could get a feeder classification when feeders were selling at a premium over fat lambs he would try to get them sorted as feeders. This is one of the reasons why he prefers to do the sorting himself rather than leave it to someone else because what he would call a feeder lamb one day he might not the next day unless some one proved it.

When he goes on the market in the morning to sell sheep the factors he considers in determining the price he will ask are principally receipts of all the markets combined, the demand as it develops from day to day, such knowledge as he has of what the packers have done the previous day, who is long and who is short and who he thinks is going to be the strong buyer on that day. If another buyer shipped out the day before, such buyer would possibly get into the market a little stronger that day. These conditions vary from hour to hour as well as from day to day.

His firm buys some sheep to fill orders though not very extensively. He does such buying.

In answer to the question "Under ordinary circumstances, as you operate on this market, and conditions under which you operate taking consignments as they come, how many carloads can you ordinarily handle in a day?" the witness testified as follows: "A good deal would depend on the market, the classification of stuff you had and what percentage you had in your hands and the other fellow didn't have. Some days you could handle considerably more than you could under prohibitive conditions. If you had the lion's share and took your time to get to them and the other fellow had to wait, you could handle a good deal more than others." On the day the witness testified (April 2, 1926) his firm did not receive any sheep for sale. On the preceding Monday they had 8 or 10 cars. The witness thinks it was 10. They were all double decks and at that time of the year double decks contained about 240 head. Those received on Monday were all fed lambs and were all sold in one day. The witness thought that his firm [fol. 306] handled about 20 cars of sheep during the week

in which he testified and expressed himself as being afraid that the receipts of that week would be above normal as compared with those of the next two or three or four weeks, because at that time they were getting to the end of the fed season and he expected that there would be a two months' gap before the range movement started, insofar as his firm was concerned.

Practically all of the sheep coming into the yards from the feed stations come in double deck cars. Occasionally the railroad, for its own convenience, will transport them from the feed stations to the yard in single decks but they are sold as double decks regardless of this.

There is considerable difference between a feed lot and a feed station. A feed lot is anything where lambs may be bought and are fed and they may be fed for any length of time. A feed station is ordinarily something worked in connection with the railroad simply to facilitate the handling of the stuff and to a large extent this western stuff is naturally on grass, out on pasture, and it is merely held for a day or two to take up a little fill and to be held until it can be brought into market. Limits might be put on a feed lot for 50, 60 or 90 days. Feed stations are usually operated by the railroads or someone working in conjunction with them. Those at Fremont and Valley are provided and operated in connection with the Union Pacific.

Under the conditions under which his firm operates and considering the market receipts as they come and the various classes of livestock he had described, he would be unable to state what he considered to be a normal volume of business that a salesman of his ability and with his organization could handle efficiently in a year's time.

It would depend entirely upon the proportion of the receipts of his firm and the condition of the market on the days on which the firm was operating. Under some market conditions they could handle quite a number of sheep to advantage and on other days only a few. He preferred 8 or 10 cars under fair conditions to twice that number under conditions that were a little adverse. If conditions were in his favor the more he had the better he liked it because the market would be such that he could maintain his market and not hurt anyone. A salesman might think he could handle larger consignments of business to advantage and

[fol. 307] still they would not be advantageous if he had them because he could work among the same number of buyers with small consignments. If there are only a certain number of buyers present on the market on a given day and the witness' firm only has three or four or five consignments to sell and he has to have that same number of buyers working, the country buyers as a rule, the more he shows them the more he puzzles them and he would rather confine his efforts to a smaller number than put the volume before them and let them make their choice and maintain the price. It takes considerable more time to trade with the country buyer. He is not quick to make up his mind and the salesman could not hold him. He is not bound by the same rules as are the regular traders. If he says he will purchase at 12½¢ and later refuses so to do, the salesman has no way of holding him to the bargain, whereas with a regular buyer the salesman can weigh the livestock up to him and make him take them. For this reason witness was of opinion that he could sell 15 sheep to the regular buyers as easily as 5 to other people and do it as efficiently because the regular buyer is a better judge of the market and can get together with the seller more easily and there is less entertaining to do. In selling fat stock and dealing with the packers alone the matter of selling would be simplified considerably. Probably more sheep are sold either to representative commission men buyers or order buyers than to country buyers but a considerable number are sold direct to country buyers. It is a matter of meeting competition and the witness tries to get the high buyers wherever he can.

The peak season is from the first of September to the last of October, which is the big range reason and during which the receipts of feeders is larger, and the receipts of fat sheep equal to the other seasons. The western shipments come more frequently in two or three car than in one car lots. The pens assigned to the witnesses' firm hold only one double deck car of sheep.

As to how many carloads of sheep he could handle during the range season and under those conditions. Witness answered in effect that he could not state saying: "You would be limited largely to your own location, a good deal depends on the nature of the consignment at the time you

had them, and how much work would have to be done on individual consignments. For instance, in my case if I happen to have cooperative shipments I would not want to have a great deal of their stuff around because it would take up your pens and you would be forced outside, it would be a whole lot more inconvenient to handle them up to a reasonable amount, where you can handle them in your own [fol. 308] location you can handle them better than you could where you have to borrow space from someone else that might be crowded the same day."

Cross-examination:

In his testimony in chief in describing the manner in which he sells sheep on the Union Stockyards, he did not intend that the Secretary of Agriculture should understand that he had given a full and complete picture or a full and complete statement of the obstacles that confronted him from day to day or that he had indicated the extent to which he has to go in order to perform his duties.

Redirect examination:

During the week in which he testified he handled about 20 cars of sheep. He regarded that as more than normal in some cases and not normal for others. There is quite a wide variation in the capacity of a salesman.

He is generally acquainted with the operations of sheep commission business on the Omaha market and the general operations as he described them are also generally applicable to the operations of other sheep commission firms on that market.

Recross-examination:

He was cognizant of the fact that there had been no change made in the sheep rate. He was of opinion that a commission charge is the cheapest expense the grower has to contend with and did not think the grower would have any serious objection to the charge if he were getting the service that the commission men were trying to give him.

Redirect examination:

As to whether the handling of a double deck of sheep involves materially greater work than a single deck de-

pends a good deal on the nature of the shipment itself. Assuming that sheep of the same class and they arrive in a double deck and in a single deck car, the difference in the work of handling them would depend entirely upon the individual shipment and the buyer. If they were fat sheep and were sold to a buyer who would buy one load as readily as two, there possibly would not be much difference. If they were of feeder classifications and two individual sales had to be made to two different classes of buyers, the work would be considerably greater. The more sheep there are to dispose of, the more buyers one would have to find. In some cases there would be a greater amount of sorting in a double deck consignment than in a single deck.

After the sheep are sold they are weighed and the salesman marks the price on the scale ticket and the ticket is taken to the office of the firm. The tickets are brought to [fol. 309] the salesman by the yardman who takes the sheep to the scales or else the salesman picks them up at the scales and marks them with the price before they are sent to the office.

C. H. Hopkins: Partner in the livestock commission firm of Bliss, Wellman and Hopkins, since September, 1924. From January, 1904, to August, 1907, he was office manager and bookkeeper for Joseph Bliss & Company, which is now Bliss & Son. From August, 1907, to September, 1924, he was bookkeeper and office manager for Bliss & Wellman. His present duties in the firm of Bliss, Wellman and Hopkins are as office manager. He is acquainted with the various details and practices of the office end of the commission business.

Usually the first thing that is done by his firm from the office standpoint in regard to the handling of a lot of livestock consigned to the witness' firm is to ascertain from the records of the Stockyards Company, at the so-called chute house, the consignment that is made to his firm, made a record of the consignor's name, the correct number of the chute into which it is unloaded, the quantity of livestock, as to whether they are cattle, hogs or sheep, the deads or cripples, if any, and sometimes the yardage, though the latter is not material from the office standpoint.

That information is recorded on what is called an office chute book. Usually the bookkeeper gathers this information. Sometimes the witness does it himself. This information shows the chute number at the different chutes, whether it be the north, east or south chute, and not the pens that the livestock has been placed in. The chute number is ascertained in case it might be necessary to inform employees of the firm as to where the stock was unloaded.

Information as to the pens in which the consignment has been yarded is usually taken from the chute records, kept by the Stockyards Company. The commission firm's chute book is a part of the regular office records.

The next step would depend upon the details that might come up in the office and would vary according to the run of business. In coming from the chute house the bookkeeper might stop at the stockyard company's main office and ascertain the loading point of each consignment. After he returns to the office the amount of sales might be headed in to expedite the delivery of them or entries may be made from the chute book on to the freight ticket which are summaries of the charges pertaining to the particular consignment as far as they are ascertained at the time. At that time these entries would not cover charges like freight or [fol. 310] any other charges in transit for the reason that the charges vary according to weight as far as the freight is concerned and it might not be possible to get even the commission charges from the Western Weighing Association on account of the consignment being mixed species. That would have to wait until the classification of the stock was determined. The feed charges would not be obtainable until they were referred to the office by the yardman. If the office had knowledge of the prorating that was to be done with respect to the consignment it might be headed into the account sales at that time, otherwise it would wait until the occasion arose. However, on the basis of as much advance information as can be got, it is attempted to head up the account sales preparatory to consummation of the sale of the livestock. The Western Weighing Service furnishes a duplicate of the proposed charges that are applicable to the livestock in transit. This duplicate also shows the count and it is compared by the witness' firm

with their chute book count, and entered thereon the number of head weighed from the particular consignment.

The next information obtained by the office may be from the customer as to the prorating, his correct address and the disposition to be made of the proceeds. We get that from the customer or someone in charge of the shipment. If no one is in charge it is necessary to obtain that information from the firm's records of prior shipments. Sometimes the customer gives specific directions by telegram or mail as to how the consignment is to be handled. We send that information out to our men in the yards. When a shipper sends instructions to the office how he would like the shipment handled, ordinarily the office communicates such instructions by 'phone to the firm's employe handling the livestock.

The yardmen give a record as to the amount of feed the livestock eats.

After the scale tickets have been received and assembled and the tickets figured, the office man checks up the load, comparing the number of head received with the number of head weighed as shown by the scale tickets. If they agree the weights are added up and shown in triplicate, and the weight of the car is checked up with the Western Weighing Association with a view to seeing that a proper classification as to minimum has been given. Sometimes the office man has to go back to the Western Weighing Association in order to get the matter figured out correctly as to the minimum and freight rate. This is done to protect the interests of the shipper.

The net returns from the sale are placed in the bank at [fol. 311] the market, which is a correspondent of the shipper's bank at his home town. The bill is placed in the clearing house and if that bill reaches there before 2 o'clock of any one day, the buyer is supposed to have a check back in there at 3 o'clock. After 2 o'clock he has until 10 o'clock the next morning. There might be some outsider who would not have a box at the clearing house and would settle at the firm's office.

A clearing house is a place where the bills are left but it is not a place that handles the funds itself. Transactions differ and it is hard for witness to cover them all.

There are a multitude of other duties that come into the operation of a livestock commission man's office which wit-

ness supervises and directs to a certain measure. The market letter gives information as to market conditions, which would sometimes include quotations. A market letter generally is to keep the firm's patrons informed.

The Journal Stockman is sent to the patrons as a service to them.

Only an individual partner solicits business, which is in the latter part of the week or the slack season.

Exhibit 68 is an account sale showing the disposition of a hog which has been sent "subject." Exhibit 69 is an account sale showing disposition of a mixed load, plural ownership,—a consignment where there was no prorate rendered.

Exhibit 68 is connected with a transaction covered in Exhibit 69. "In this particular shipment the Government sent one hog 'subject' to post mortem examination and we rendered our patron a knowledge of what was our disposition of this particular animal, showing it has been 'subject', the price which it sold for, how it passed on examination, passed for food, giving him the Government's identification number also. The firm could not remit for that hog on the account sale rendered on March 2, covering the rest of the load; it was necessary on March 6, to make a separate remittance for that hog." The reason for showing this is to give the whole facts to the shipper as far as the *facts to the shipper as far as the* firm is concerned.

It was not necessary to prorate in this case, "by request of the shipper or our knowledge of his disposition in the matter." Plural ownership is gained from witness' knowledge of the persons who shipped. However, some account sales might carry the mark of different species and differ-[fol. 312] ent sorts to substantiate witness' answer above, but that didn't happen in this particular case. A remittance here was made as if it had been single ownership. Charles are all made in a case of this kind on the first account sale to guard against errors.

Exhibit 70 is an account sale rendered for a carload of cattle and calves where there was a plural ownership, stating the marks which give the shipper the information as to the different ownerships and where there was no proration charge made. In this case remittance was made by one check or draft. Only one account sale was rendered covering the entire shipment. Witness presumes there

were six owners in this load. Account sale was made out under the supervision of witness. This account sale is an exact copy in every respect, except the shipper's name, to the best of witness' knowledge and was made out under his supervision from a duplicate in firm's files, of the original sent to the shipper. There were 13 different drafts in this case and 13 different weight tickets would have to be worked over. It was impossible to tell how many different buyers were there in the case of that shipment.

Exhibit 71 is a copy of the account sale rendered to the firm's patron showing the disposition of his stock, which is a plural ownership consignment, showing marks and identification, but not prorated for a load of hogs. It practically represents the same thing as Exhibit 70—different as to species. Two buyers appear on this account sale.

Exhibit 72 represents a transaction in the sale of a load of hogs for a yard trader, and the way of remittance. Consignment was sold to one buyer with the exception of a cripple. The cripple was shown in a separate ticket. A cripple causes us a lot of trouble; in the case of a cripple the price is agreed upon at so much off of the lot price and the witness has to figure out the price.

Exhibit 73 is a copy of the rendering of an account sale to a patron for a mixed truck shipment, and different from the others; instead of showing the car number it shows the truckman's name and post office and the rates and charges. Witness has to figure the truckman's bill when it comes to a specific rate per hundred. The truckman either renders a truck ticket or tells the witness what the charge should be. In such cases truckmen's charges are deducted similar to freight, and return made promptly to the truckman.

Exhibit 74 is a copy of a truck shipment of hogs ren- [fol. 313] dered to a patron and the charges thereon. There are two buyers in this load.

Exhibit 76 is an account of purchases rendered for customers showing by whom the different lots were purchased and the charges thereon, also showing how he made collection of same. There were 35 in this lot. There were 12 purchasing transactions necessary to acquire this lot. This does not indicate to witness whether they were bought the same day, bought the same hour, or whether they were separate transactions.

Exhibit 77 and 77a is a copy of an account sale rendered to a patron for a prorated shipment of hogs. A prorated shipment of hogs is a car of hogs owned by more than one owner. There were 71 hogs in this car. Prorating is the assembling of tickets to correspond with the number which each man has, a proper division of all expenses, and the separate remittance to the owners. Prorating from a freight standpoint is upon weight; from a yardage standpoint, by the head; from the commission standpoint, it is prorated according to the schedule and by the head; but the small prorations are split as near as we possibly can to be fair to each party concerned. On those latter minor items the firm exercises its judgment; for instance when a man has 36 hogs and another man has 35, the charge for yardage insurance is 15¢, and the one with 36 head is charged 8¢ and the one with 35 7¢. Same way with the meat board fund. And when it comes to inspection we charge on a 50/50 basis because there is no possible way to be any fairer. A separate account and a separate remittance is made to each owner.

Exhibit 78 is a copy of an account sale rendered to a patron for a carload of cattle and calves and shows the disposition. This is a single ownership load. Necessary to make out 11 tickets.

Exhibit 79, consisting of 4 pages, is a copy of an account sale rendered to several customers for a prorated lot of cattle, showing the disposition and the expenses together with the disposition of the money—27 head of cattle and 4 owners. It has not been the practice of the firm for a great many years to make out a master prorate sheep for plural ownership consignments. A separate account sale gives the general information and a master sheet is of no service to them ordinarily.

Exhibit 81 is a copy of an account sale rendered to the patrons showing the disposition of his stock and charges thereon and disposition of his profits for a straight load of hogs, consisting of 2 drafts, single ownership.

[fol. 314] Exhibit 82 is a copy of an account sale rendered to a customer showing the distribution of his stock, consisting of a carload of hogs, species and disposition, and charges, and disposition of money. This is a single ownership representing hogs and cattle, representing 7 drafts.

Exhibit 83 involves a carload of cattle showing the charges and disposition of the money. 24 head of cattle, representing 6 drafts.

Exhibit 80 consists of several copies of account sales rendered to the patrons, consisting of several classes, several species, and several owners, showing the marks in some cases, which is a proration of a shipment as rendered to one shipper, together with a master sheet showing the addition of several amounts to make up the money returned to his bank. There is a master sheet although witness does not call it that. It is a sheet given to the customer so that he can more easily check this up and see that we sent the full amount rather than to add it up on any specific account sale from which he makes distribution to his patrons. There appeared to be ten owners in this shipment. This is a jackpot shipment. A jackpot shipment might be a lot of owners or a lot of species or a lot of classes or a lot of hogs. This represents hogs and cattle and different grades and classes of cattle. Exhibit 80 represents plural ownership on a mixed load, requiring prorating. The shipper was delivered separate account sales and the proceeds were remitted in one amount. This happened to be a shipment from a shipping association. In such cases it is not customary to prepare separate checks unless requested. We do not prorate unless requested. If the association requests a prorate, future shipments from that association are prorated.

If the firm sells a load of seconds for a trader, the firm remits by check to that trader either through the firm he does business under or to him direct. The difference in handling such a shipment for a trader and others is a difference all along the line, from an office standpoint, as most consignments of seconds do not carry any charges, not a commission charge. The firm does not have to expedite the returns as often, don't have to watch the account—comparing the number in the load—which is much easier all through. There is not the high attention paid to the consignment. An account sale, however, is always prepared. Other than the charges collected against such a consignment of seconds, the method of handling and the work involved in the two cases is not apt to be different, but they

come to the office straight with less tickets—that is, more apt to be weighed in one draft, with less sorts.

[fol. 315] In regard to mixed species or mixed ownerships, it is very hard to determine the extra work involved, from the office standpoint. Every shipment is in a class by itself and conditions would vary from day to day,—conditions of the market, weighing, and also as to our information in regard to the ownership market—it would be very hard to estimate the time it takes because that would vary as to whether he had a large percentage of his consignments which were sold in one draft, that would be hard to say.

Q. Is it a fact that you have quite a number that are only in one draft?

A. Oh, yes, the firm gets a large amount of stock in by truck.

Witness sold some livestock in the yards back in 1912 or 1913 and before he worked in the office he was a yardman for a few months. Truck-in livestock very seldom amounts to a carload. The percentage of hog truck-ins at this market is greater than other species.

Witness does not know whether the methods he has outlined and explained here in a general way would apply to other commission firms, as far as office transactions are concerned. In regard to changes in connection with the office management of his own firm, "the changes have been many." He could discuss that from the date he is testifying until next June. The office end has been made a very important factor in running the commission business. The markets are much slower, for several reasons—more tickets for a consignment than formerly, more "subjects" and "weigh-backs"; and the consignment has required more attention and higher attention. In the early days witness said he knew the customers more intimately and didn't have to question their ownership. When he started he could handle a great many more consignments from the office standpoint than with all his experience he could today. As to why he had more "weigh-backs," he cannot answer that, from the office standpoint.

There has been a gradual change for the benefit of the service to the shipper. In most instances the market papers have been sent out at the request of the shipper. It

is for the good of the service that the market paper is sent. "A customer that is interested in the livestock and market throughout the year, we feel is entitled to a paper the full time, but we have to use our judgment and do use the best judgment we have in not sending to people who are through shippers or don't have any stock to ship. We watch it very closely and curtail expenses."

[fol. 316] When people go to the country they register at the Secretary's office at the time of leaving and reregister when they get back. The amount of time spent in soliciting is regulated by the Exchange rules.

Cross-examination:

Operations for 1925 were unprofitable as a whole. Witness maintained the firm as economically as possible consistent with the rendition of first class service. It was certainly necessary to incur all expenses in order to maintain the service. Does not know what it costs to sell a carload of cattle. Does not know cost of selling hogs nor the amount of work performed by the different salesmen employed in this concern. It is not possible to determine that fact.

Redirect examination:

Witness was asked what he considered a profitable commission business. Witness feels that in view of the class of men that go into this business, the hazards to it both in money and in nerve force, that they are entitled to a reasonable profit above the cost of operation and living expenses, and that would naturally apply to any commission firm.

Does not recall any special year when it was a profitable business. The expenses of the commission business seem to crawl up. Last year the receipts at the yard were small. The gradual changes in the methods for the benefit of the shippers create greater expense and we cannot cut expenses without cutting the service,—speaking from the office standpoint. The hazards are great from the office standpoint. The office is the hopper of the business. Asked what the hazards from the office standpoint were, witness said errors of many kinds from the taking of accounts from the chute books at the chute house to the time that you re-

ceive your money and balance your account. You can over-estimate or under-estimate, even upon the number of head, an error which might be very costly; you could send money to the wrong shipper; there are so many chances there of errors if you went to sleep on the job. You must be on high tension every moment. These matters are under control through the efficiency and quality of the men that are employed.

Recross-examination:

Witness' firm is a partnership and the salaries drawn are largely as a drawing account. Witness is not able to live any better than the neighbors in his community, and does not live extravagantly. Witness thinks they must have additional compensation in order to maintain the service or keep up the personal standards of living. If the increase is disallowed the firm will operate at a loss during the coming year.

Redirect examination:

[fol. 317] If the witness had full control of this firm and went out and hired as efficient men as he now has, he would have a greater loss than the audit shows. Doesn't feel that the salaries drawn as a drawing account are adequate for the service rendered, from the standpoint of years of experience, and that temperament to keep in mind the welfare of each and every customer. "We have dwelt upon the importance of service to the shippers" and when asked about the changes in this service in the last few years, said that they were many,—"The watchword of the commission firm is better service and we are all striving to give the best that it is humanly possible to do." 1924 was not exceptionally profitable but was better than 1925 for his firm. Couldn't state exactly why that was so. A certain per cent of loss of receipts,—but couldn't state the exact reason. "Declining receipts has a tendency. In the commission business you can not hire and fire for each job; you have got to carry an overhead and take care of the peak load in order to be efficient as a commission company." Witness has carried substantially the same organization for quite a number of years.

Asked whether or not decrease in volume that this firm got would justify a change in the rates:

"A. To maintain the service under a heavy load or a light load and the additional expenses which creep in you must realize that a man coming into your employ at a certain salary you cannot keep him when he becomes efficient—you cannot keep him as a rough worker—he dovetails into that organization to make it more efficient, if he has the right kind of temperament.

"Q. Let us assume 1926 won't be as good as 1925. Is that going to be, in your opinion, a justification for further increase in rates?

"A. That is the future. I cannot tell you. If we feel the service we are rendering must be maintained for the good of the shipper, we must keep up that service."

If the firm should decline, it would mean a decline in the service or elimination. If it should result in eliminating men who have been brought up in this service for years, witness would not dare prophesy the effect upon the livestock industry. The men who pay the commission are the [fol. 318] final judges of the quality of service and they are not kicking.

"Q. Then, if such a thing as elimination should happen, would it be a survival of the fit or the unfit?

"A. This business is so peculiar a type to itself that I am not going to say that there is any unfit here. One man's ability to get stock for more or less is not always his unfitness for salesmanship."

Witness' business does not vary very much as to percentage of the stock received at the market, over a series of years.

"Q. Then in territory tributary to this market if you were able to increase your volume of business from that territory the probable result would be to take that business away from another firm on this market,—at any given market?

"A. If we did not branch out on some unknown scheme to increase the receipts.

"Q. If you didn't the answer is yes? Is that right?

"A. Naturally.

"Q. Then *is* the solicitation and advertising which your firm conducts in time at least directs its course in securing of business from territory which is already tapped? By other firms on this market?

"A. It would have to be within the confines of stock tributary to this market in that case.

"Q. Would that be a considerable part of your efforts?

"A. Naturally."

If this firm went out to take business away from a firm that did more business prior to our decrease, it would be to his disadvantage; but if this firm only regained a part of that which they have taken away from us it would not be to his disadvantage, in that particular sense. A perceptible decrease in the volume of business in any way would be regarded as a disadvantage, naturally. The average firm naturally likes to increase its business. A firm naturally has to have some volume to cover expenses.

[fol. 319] There is a certain amount of overhead which has to be met in any firm, regardless of how it is organized. The facts to be considered in employing a salesman are experience and high type of manhood. The main reason he thinks the present increase is justified is to maintain the service that the experienced men in this business believe necessary to be maintained.

As the volume declines it is going to be more difficult to maintain the service to a measure. Witness feels that he is obliged to maintain his present organization under depressed receipts. Witness was asked whether his firm could handle any more business than it is now handling. And said he could not speculate as to whether he would have to strengthen the service. They are schooled that the one thought in the mind is protection of the shipper, and has been down through his district.

"Q. If you received an increased volume of business at any time, you would take care of it with your present organization?

"A. I would endeavor to, naturally, that is human."

Recross-examination:

"Q. Well, isn't it a fact, Mr. Hopkins, that if for any reason your business should decline rapidly and you were

permitted to charge the rates that you now charge, and that you have to hold your people as long as you can, that you either have to lose money or get out of business?

"A. Absolutely."

Witness does not believe that the increased rate now in effect at this market contemplates an unreasonable price for the services rendered. The amount of business a man can bring to the firm would be an indicator whether he was fit for this particular business.

"Q. Now, let us assume he would go out and start in business by himself,—set up a commission firm of his own. If he didn't have a clientele to follow him, even though he has ever so much ability, native ability, isn't he up against a problem of carrying on an unprofitable business?

"A. Naturally.

"Q. Just looking at your own firm from a business stand- [fol. 320] point, I suppose you would not consider it good business judgment to carry an overhead or an employe whos services were unprofitable even though he were ever so capable?

"A. For any length of time, yes."

Charles Burke: Of the firm of Burke-Rickley Commission Company, sells steers and looks after the affairs of the concern, being a senior member—manages the business. The firm handles hogs and cattle and sublet- sheep, not having much of a sheep business. That is, another firm sells the sheep. It seldom sells the butcher stuff. The third partner is a hog salesman; helps witness with the office work. The firm also has a bookkeeper. Has been in business on his own account at Omaha since 1900. Does not clear for any other firm. Handles no livestock loan business—just straight buying and selling. Where you run on a straight commission basis and handle it on a small scale like witness does, it does not take a great deal of money, $3,000 would be ample for capital. It would require a certain amount of capital to handle your remittances to the shippers.

Witness is familiar in a way with the increases that have been made over the old schedule. Asked what those increases are, answered, "Well, sir, as near as I can tell, it is around about 67¢ on the hogs and cattle." Asked in regard to the sheep rates, he did not know because they handle very few sheep. The firm handles all kinds of cattle; probably handles more heifers than anything else.

Asked to state the conditions, if any, that he regarded as justifying the increase in rates in the new schedule, witness in reference to his own firm thinks: "We are perfectly justified in asking for more money." The expenses of his firm have increased in the last year but he has employed no more help. He thinks this is a general condition on the market. Asked if there is any other reason for the increase, answered, "Well, I think the business gets lighter every year, we are less than we were last year." Witness said that his firm's receipts had been getting lighter but could not state when the decline in receipts started.

Asked about the increase, witness said that that was an exchange matter. The increase was first prepared by the committee.

"Q. Is there a standing committee for that purpose?
[fol. 321] "A. I can not say for sure whether we have a standing committee for that or not.

"Q. How is it put up to the members?

"A. By calling a meeting, I presume, of the exchange."

Witness could not state what factors were taken into consideration in making the new increase other than "We thought we were justified in doing so."

As to what determined the amount of increase, answered "Well, I would say the increase in expenses, the falling off particularly in our case in our business the last year." Asked about the maximum $2.00 increase, said "This time of the year we very seldom get $21.00. In the fall of the year we do not always do the maximum, but quite frequently." Witness sells drive-ins, which cause more expense and more trouble to handle.

Cattle frequently run less than 20 per car at this time of the year, generally during the fat period. At this time of the year they run as low as 15 per car. Range cattle run around 23 to 26 on large cattle. The smaller cattle

run more to the car. Range yearlings or grass yearlings run about 30; 2-year-olds, about 3 head lighter than the yearlings; 3-year-olds, about 24 to the car. Witness buys cattle that his firm handles. He usually ships them out in 36-foot cars; had one 40-foot car last year; nothing any longer than 40 feet.

Asked as to whether there was any greater work or greater expense, or both, to buying a carload of cattle to be shipped in a 40-foot car than a 36-foot car, witness said:

"It all depends on the kind of cattle you buy and how you would buy them. If you were buying a load of 2-year-old steers and couldn't get them in one place—had to buy them in two or three or four places—it would be more work. But if you bought them straight, it would be practically the same as buying a 36-foot car."

Witness charges more when he has to gather the cattle up in three bunches or more than if he buys them in a single carload or in one bunch. Asked if he had to pick them in several places more frequently than buying a straight load, answered, "I won't say more frequently—no, sir. They run more in straight loads." If he is able to pick up a 40-foot carload in one place at one purchase and had to make six purchases to obtain a 36-foot carload, he would regard the buying of the 36-foot carload more expensive.

[fol. 322] Truck-in livestock is more expensive to handle than the same number of livestock coming in by railroad.

Witness is president of the Omaha Live Stock Exchange. Didn't work with the committee of the exchange in preparing the present tariff.

"Q. Mr. Burke, does plural ownership in a carload of cattle always mean that the different owners' cattle have to be sold separately?

"A. Yes sir. Not always—don't have to be—sometimes we will mix the same class together and weigh them separately. We might sell off five or six head of one kind belonging to two different men—sell them together, if so instructed by them."

All members of his firm have memberships in the exchange, which are regarded as individual assets. These memberships do not have an ordinary market value. The

present value is considered to be $5,000, which represents an increase in recent years of $1,000.

Cross-examination:

The owners draw no stipulated sum of money as salaries. Witness is unable to determine the amount of commissions derived from the service of any individual, working in the cattle department. This also applies to the office force. No separate records have been kept as to the amount which should be charged to cattle or hogs and there is no way of determining that. Can not hire people for less money than the amount of profits received by his partners. Witness thinks he could get twice the amount of money he is now making if he would go to work for another firm.

Redirect examination:

In business generally, sometimes a man makes more money when working for himself than another, and vice versa. Assuming that his business made $10,000 a year profit, it would be immaterial whether that amount were divided as profits or paid as salaries.

C. C. JOHNSON: Member of the commission firm of Wood Brothers. The owners of the Chicago branch have an interest in this house. Wood Brothers is a copartnership. Four partners in the business here; there were five—one died on August 27, 1925. All partners are actively engaged in the business. Witness manages the office. Two of the other partners sell cattle at Omaha. Two of the firm reside at Chicago, one of whom died August 27. Wood Brothers conducts no other business than buying and sell-
[fol. 323] ing livestock on commission. They have always done a cattle loan business—cattle and sheep. Do not clear for any other concern.

Witness was asked in a general way the labor involved in making out account sales. Answered: When the tickets are received from the yards the account sale clerks figure the tickets and they bill against the buyer, and then the account sale is made up from those tickets, depending upon what kind of a shipment it is, whether it is straight, pro-

rated, and the different charges are double checked. Every ticket is figured twice; freight is checked twice. And the different items as they come up are charged against the shipper, and finally we get down to the net of it and are ready to remit.

Witness was asked whether any difficulty was experienced in calculating the amount of commissions to be charged shippers.

"A. Well, when there is any question about it and the clerks discuss it and then they go to the cashier and come to me or go down to the secretary of the exchange for interpretation of any point that may be in doubt. It does not happen very often. They are more or less complicated. Questions more often arise in connection with mixed shipments—different species and plural ownerships, light load or heavy load. There are several factors to be taken into consideration in determining the commission charge on those kinds of shipments, namely, the number of head and the classification, whether it might be a light weight shipment under the minimum or over; single and double deck also make some difference; that would be particularly true with reference to plural ownerships. Then there is an extra charge for sorting into more than three grades or classes, and an extra charge for prorating in some cases, and a small extra charge for making out individual account sales in some cases. These charges tend to increase the work greatly in the office. If these charges were covered in the basic charges it would tend to decrease the work somewhat. From the office standpoint he would regard it as advantageous to his business to have those charges covered in the basic charge and it would facilitate the work of the office, but he does not know that it would tend to obviate mistakes because we make very few mistakes in account sales—considering the number."

[fol. 324] Was asked if he wouldn't have to exercise so much care to keep from making mistakes.

"A. Naturally, it would be easier to make out the account sale with the straight charge instead of the combination or complex charge."

Asked if his firm had any inquiry or discussion with shippers in regard to the commission charges, indicating that they didn't understand them, witness answered that occasionally a shipper will ask for an explanation of the commission charges and the custom has been to take the printed regulations and read them to him. If he doesn't understand it we will let him read the whole rule, and if he wishes to, we will explain it to him.

His interpretation of the tariff in regard to extra length cars was that a 40-foot car would carry an extra charge of 75¢ per foot up to three feet.

"Q. Mr. Johnson, do you know whether or not there is any more difficult labor or expense connected with the handling in the yards of livestock that has been trucked in than livestock coming in in cars?

"A. Truck shipments come in in small numbers, a great many of them; it is increasing, the small shipments require just the same care and attention as the big ones. Further than that, commission men do more yarding from the unloading box or truck-in shipments than they do on shipments received from the railroad. That would make it more expensive—more labor. * * * Take a small shipment of 5 or 10 cattle. There is just as much work on it, or more work than a straight load over the railroad, for, as I have said, we have to yard the cattle coming by truck while the yard companies yard—that is, they deliver to our selling pens—the cattle that come in from the railroad."

Witness has been in the livestock business 18 years—been a partner for 5 years. Been in the office end of it all the time. With the increase in the truck-in business it is necessary to put a first class salesman on that division to devote his entire time and attention to it, and sometimes they have an extra yardman over there also.

"Q. Mr. Johnson, the minimum carload rate for selling cattle in the new schedule, Tariff No. 2, is $1.00 higher [fol. 325] than the rate in Tariff No. 1, and the maximum is $2.00 higher. Do you know how those amounts were arrived at, for your firm?

"A. I was not on the committee that prepared and filed the new tariff about which you speak."

Asked if he knew who composed the committee, answered in the negative.

No member of his firm discussed those rates with the committee. The principal reason for the increase is the increased cost of operation, the responsibility we assume when we accept or receive a shipment of livestock. When the arbitration award was made, we objected to the rates as inadequate, and also objected to being put on a lower basis than Sioux City and Chicago.

There has been more work in late years in the remitting of proceeds because bank and loan companies carry a great deal of livestock. Another thing is that shipments come in smaller carloads and more owners and you have to be very careful to remit to the proper man.

Witness was asked whether if a seemingly lower rate produced a larger income to his firm than a seemingly higher rate, his firm would prefer the seemingly lower rate.

"A. Do you mean that we would prefer a lower rate to a higher rate?

"Q. Yes.

"A. Not on your life."

If the increase in this schedule on cattle were taken off cattle and put on veal calves, it would not be advantageous to his firm, because of the small number of veal calves sold. Witness said he would not be able to answer the question whether one schedule, seemingly high, might not in reality be somewhat low. Witness would desire an increase in rates at Omaha, even if the Omaha rates, as set forth in Schedule No. 1, were equal to those at Chicago and Sioux City. It is his opinion that the rates at Omaha are too low. It is his opinion that all commission rates at the river markets and Chicago are too low. It is doubtful whether the increases provided for in Schedule No. 2 will be adequate to take care of increased expenses in conducting commission business at Omaha. Schedule No. 2 was adopted by the firm of the witness on March 27. He does not remember filing this tariff, but understands that it was filed from the office of the secretary of the Livestock Exchange [fol. 326] on behalf of the various firms, and that his firm would concur in it. He made no study of the rates proposed in Schedule No. 2. The office procedure of the vari-

ous commission firms is very much the same. Tariff No. 2 will increase the income of the commission firms. Should the firm of which the witness is a member be compelled to go back to the charges stated in Schedule No. 1 of Tariff No. 1, it would be impossible for this firm to maintain the standard of service that the shipper demands and at the same time to pay fair wages and to encourage young men to come into the business. The witness knows of several firms who have gone out of business on the Omaha market, but he has not known of one to go out of business by reason of its inability to make a sufficient income under the schedule of rates. The witness talked with Mr. Stryker relative to testimony he would give in this case.

Cross-examination:

The witness considers the rates set forth in Tariff No. 2 inadequate to provide a sufficient income to compensate him and his associates in business for the service they render their patrons. He considers the charges, as set forth in Tariff No. 2, low. The witness does not believe that cattle, hogs, and sheep ought to be handled for the same charge per car. He does not believe that straight cars and mixed cars should carry the same commission charge. The basis for this belief is that a flat rate per car, regardless of species or whether the cars were straight or mixed, does not take into consideration the different quality of service rendered different patrons. The witness maintains that rates are small when compared with work, responsibility, and increased expenses. In the last three years one shipper has complained about rates. He does not believe that his firm has had half a dozen complaints as to rates during the eighteen years he has been in the commission business. No shipper has complained about the new tariff.

There is expense connected with the handling of livestock loan paper. The witness is unable to tell from the exhibits how much it costs to handle these loans. The witness considers that income derived from handling livestock paper is a part of the commission business. The amount of income from this source has been deducted by the auditor in an item of something over $5,000.00. The auditor has eliminated income from loans and expenses on account of loans, not considering the loan business a part of the com-

mission business. The attorney for the Government objects to questions relative to livestock loan business because Tariff No. 2 contains no charge for making livestock loans. Cattle loans are made for the purpose of getting shipments and not for the purpose of making a profit through receipt [fol. 327] of interest. It is impossible to tell from the exhibit how many animals a paid salesman, listed by number, handled. The source of this information would be the scale tickets, and it is doubtful whether it could be had accurately there. In the opinion of the witness it is impossible to calculate the precise cost of selling a car of livestock. The witness did not receive what he thinks his services were worth during 1925. He does not believe that rates ought to be — low as business wil permit them to be, nor so high as to be exorbitant. Rates should be high enough to enable a firm to encourage the men and keep them in the commission business. He thinks rates are too low. There is little difference in the way the Government auditor distributed expenses and that used by the firm of the witness.

Quotation from the Arbitrator's Award to the effect that should the rates proposed therein prove impracticable, relief might be had upon a proper showing to the Secretary. The tabulation of account sales was done indirectly through the account sales register of the firm. The account purchases were examined. The account sales register is kept by two account sales clerks employed by the firm and is an accurate record of the business done. The firm has made no attempt at mathematical accuracy in allocating expenses or in calculating the cost of selling each species. In adopting and filing Tariff No. 2 no such mathematical accuracy was used. An attempt at cost accounting made by the firm some years ago came to nothing because no agreement could be reached as to the distribution of overhead, each department being unwilling to assume any of the expense for advertising, legal fees, taxes, general expenses, etc. If consented to by the shipper a charge of five cents a car is collected for the National Meat Board. In case of mixed shipments, prorating is done where possible; where impossible the charge is levied against the shipper sending the largest number. Cost of brand inspection is charged on the account sales against the shipper of branded cattle. Both gross and net incomes of the firm were less in 1925

than in 1924. The main source of income from the cattle loan business is indirect. If a loan be made to a producer for the purpose of buying, finishing, and selling livestock, the firm of the witness expects to receive a commission for buying the livestock and a commission for selling it when finished and shipped back to market. On some of the livestock paper, banks allow a small discount. The livestock commission business is a personal service business but requires some capital. The firm of the witness employs [fol. 328] a good-sized amount. Some of this capital is employed in the loan business. A part of it is used to remit to the shipper of livestock for which collections have not been made at the time of remittance. One shipper has complained about increased rates. There was an explanation in the "Journal Stockman" early in the week previous to that in which the witness testified, of the increase in rates provided for in Tariff No. 2. The firm of the witness did not send out any notice of the increase to the shippers in its market list or in any other way.

R. J. COLINA: Is a hog order buyer and office manager and has been associated for three years with the Kennett-Murray Company operating on the Omaha market. He has had 26 years experience. Hogs are purchased of the commission men. About 90 per cent of the business transacted is on order. Ten per cent may be classed as speculation in hogs purchased but not suitable for order. In about 50 per cent of cases it is possible to buy hogs straight.

When hogs are purchased, if they are not weighed immediately, they are delivered to the alleys of the order buyer by the Stockyards Company where they are graded for weight and quality. They are then reweighed to the packer from whom the order was received. Of the 10 per cent sold locally, a portion is sold by the witness and a portion planted with the commission men. The reason for planting is that the commission men seem to be able to get a better price than that for which the witness can sell them. The witness has observed no prejudice on the part of packers against seconds.

The main factors determining price are the Chicago market; the order buyers; and quotations already sent out to

prospects. Buying is done on prospective orders; otherwise, the desirable grades would be sold. The witness pays one-half the regular commission when hogs are planted with the commission men. Hogs, when planted, are filled, weighed, sold, and properly handled. When sold, account sales and check are brought to the office of the witness. Commission men on the Omaha market put forth their best efforts to render good service to the shipper and are particularly strong in getting an unusually large fill.

The witness has heard no complaint with regard to the increase in rates. There are three other hog buyers besides the witness employed by the Kennett-Murray Company. He estimates that his firm shipped 1800 or 1900 cars [fol. 329] of hogs in 1925. Most of these were shipped away from Omaha in double deck cars. The firm has one cattle buyer, and it did not start in the cattle business until April, 1925. Hogs are fed most of the time before they are shipped away from Omaha. Shrinkage in the winter is about one pound a head and in the summer about two pounds.

Frank E. Bliss: Of the firm of Bliss & Sons is *Bliss & Sons is* a livestock commission man operating on the Oamha market. This firm buys and sells livestock on commission and buys on orders. It handles cattle and hogs chiefly. Sheep consigned to it are turned over to a sheep company. The firm has five salesmen. The witness is a steer salesman. Of the two other cattle salesmen, one sells she stuff and the other calves and bulls. There are two salesmen who sell all classes of hogs, one located in the truck division and one in the main division. In addition to selling cattle, the cattle salesmen keep the books. There is one yardman.

The usual number of cattle in a car is 26. Eight is the smallest number that the witness has ever known. The number is not usually less than 20. Cattle, excluding calves, seldom run over 30 to the car. Fat cattle run 22 to 25 to the car. Yearling feeders run 35 to the car.

The witness had two loads of mature cattle on the day he testified, running 18 to the car. Stocker and feeder cattle

originate mostly in western Nebraska, South Dakota, western North Dakota. The number of calves received at the Omaha market is comparatively small. They arrive practically always in single decks. Packer hogs run from 45 to 80 to the car.

The witness does not know the provision of the tariff which went into effect the Saturday previous to the day of his testimony. He does not know what difference the increase would make in commissions. He does not know from the standpoint of his business whether the increase in rates was necessary. He would like to pay his employees a higher salary. As for himself, he desires to make a living only. He says he cannot make money on the Omaha market. He had nothing to do with the making of the schedule which was filed by members of the Exchange or officials. He does not know anything about it. He was not present at a meeting which voted favorably upon the increase.

Mixed cars necessitate prorating. This is difficult work and is done by members of his firm at the jag end of the day. What is ordinarily known as a jackpot, that is, a [fol. 330] bunch of stuff herded together, calves, bulls cows, canners, cutters, steers, feeders, stockers and fat cattle, requires a great deal of sorting, to determine whether they belong to one owner or more than one. There is less office work connected with a single owner jackpot than with one of plural ownership.

The average number of cattle in a drive-in lot is from three to five. Drive-in hogs are sold in a separate division from those arriving by rail. The witness estimates that 8 or 10 hogs constitute an average truck load. When cattle are of a different grade and belong to different owners they must be sold separately. Livestock arrives at the Omaha market in 36 foot cars; occasionally in a 40 foot car. The work of selling a car of cattle depends more upon different grades than upon weight. In the case of a straight car of fat cattle, no more work is required to sell a car of 20 than a car of 25 of the same grade. Ordinarily, it is more trouble and requires more work to sell mixed carloads of cattle than straight carloads.

The witness has had 30 years of experience. The majority of cattle received by the witness come from the Black Hills. Perhaps 80 per cent of cattle received by this

firm are mixed cars belonging to different owners. Hogs are generally sorted by this firm. Stocker and feeder cattle received by the witness require sorting as to grade, age, and ownership. The traders in the yards buy most of the stocker and feeder cattle. They sell to farmers or to commission men. Frequently farmers employ commission men to buy stockers and feeders for them.

The salesmen who could sell fast and good deserve a higher salary than the salesmen who sell slow and good. The Omaha market is practically a 5-day cattle market. The witness has had no complaint made to him relative to the increase in rates. He has had complaints prior to this time. "I have had them roar their heads off about everything."

RICHARD S. SHORTELL: Accountant employed in the Packers and Stockyards Administration. Has been so employed since October 17, 1922, as senior accountant; has had about six years' public accountant experience; a certified public accountant; has audited commission firms all over the country; has made both financial audits and trade practice audits. He supervised the audits made in this case. He first designated a firm to each auditor and told them along a general line what he wanted done or covered and also reviewed their working papers and reports. He reviewed [fol. 331] each individual one and reviewed them all before they were typed.

The financial reports were compiled first from what is called the Closing Trial Balance at the end of December 31, 1924, and out of those figures and balance sheets was built up a statement of the financial condition, and then opening trial balances were taken at the end of 1924 and a closing balance sheet was constructed and a profit and loss statement.

Witness reviewed each auditor's report as he brought it in and if his working papers were not clear he wrote out the questions for him along the line he wanted him to get a complete audit and had him go back. Sometimes they went back to a firm two or three times to get the necessary information to make the audit complete. The working papers were brought by the auditors to him and the

financial statements in every instance were compared with the working papers. He made notes on a pad and gave the working papers back to the auditors and told them to get that information for him in order to complete the papers, and required the financial statement to be satisfactory to him in every case.

There were no financial statements made from the records of any firm which were not reviewed by him. These statements were delivered to the several respondents but after they were delivered there were little clerical errors corrected in a few instances. All of them were minor; some typographical errors and none were of importance.

These financial statements were delivered to the several respondents on March 23 and 24, 1926, which was as soon as they were ready. Receipt was acknowledged by them in communication to the Government.

These financial statements bear the numbers of 1, 2, 3, etc. and do not bear the names of any commission firms or respondents. This was done in order to avoid publicity as to who the different firms are. This code for identifying the numbers with the firms to which those numbers correspond is contained in Exhibit 6.

Exhibit 7 is a financial report covering the financial position and operation from December 31, 1924, to December 31, 1925, containing a profit and loss account for the interim, reconciliation of net worth, and statement of salaries for the year ending December 31, 1925, for firm No. 1.

Witness explained the various items in Exhibt 7, such [fol. 332] as Cash on Hand amounting to $400.00, which he said was cash on hand December 31, 1924 and the next item of $14,865.52, which was cash in bank at that time. Proceeds Receivable was money due the firm on account of salable livestock coming into the market.

Another item was Total Current Assets, followed by a subdivision item, "Fixed." Asked the difference between current and fixed assets in this method of auditing, witness answered that current assets are ordinarily thought of as a quicker liquidation than fixed assets accounts, fixed being more or less permanent in their nature while current assets are used to carry on the operation of the business and pay current liabilities, whereas fixed are not disturbed. This distinction was employed in auditing all the various firms.

Item $3,104.19 covered furniture and fixtures.

The next item was Less Reserve for Depreciation, which means that the firm had a reserve for depreciation of office and operating equipment set up for that amount. This was set up on books of Firm No. 1.

The next item was Total Fixed Assets, which was followed by a subdivision "Diverted," and witness was asked what was meant by "diverted assets." He answered, "It is advertising supplies on hand, and was classed as 'diverted' because in accounting as a diverted charge to profit and loss but not an item for that period as they were assets on hand and were not used up to that point but would be used probably in the year following." Advertising supplies on hand appeared to be self-explanatory.

The next item was Total Assets.

Current Liabilities are those that are paid within one year. Accounts Payable to the yard company amounting to $2,747.10 was a liability of that character. Freight amounting to $1,967.08, Yardage $499.40, and Feed $280.62, are Current Liabilities.

Next item was Accounts Payable amounting to $1,700.38. Part of this was to the Exchange and part of it for brand inspection charges, and the balance to individuals. The following item was Proceeds, Hold Account of Branding, amounting to $50.29, which means that the firm No. 1 is holding up proceeds payable; in other words, accounts payable, account of some difficulty in arriving at who was the rightful owner of the branded cattle.

[fol. 333] The next item was Total Current Liabilities; then appears a sub-heading Net Worth. Net Worth is the difference between the assets and the liabilities, ordinarily; that is, if the assets exceed the liabilities. If the liabilities exceed the assets it would be a deficiency. The foregoing is the practice described as employed in making the audit of firm No. 1.

The first item under Net Worth is Capital Stock, and then Surplus.

Surplus is the accretion of net proceeds over a term of years in this instance. Balance sheet as of December 31, 1925, is to show the financial condition of the firm at the close of business on that date, and is comparable with what has just been explained but of course the figures are different.

In the financial statement of firm No. 1 the balance sheet as of December 31, 1925, contained the same headings and segregations as the balance sheet of December 31, 1924, and according to accounting practices is explained in the same way. The net worth on the first sheet represents the capital this business had as of December 31, 1924. Net worth on the balance sheet as of December 31, 1925, which shows the capital employed in the business of firm No. 1 as of that time. The excess of assets over liability must be the capital in the business and is so considered in accounting practice.

The profit and loss statement for the year ended Dec. 31, 1925 was to show the results of operations for that year. This shows all the money taken in within that period. The audit also shows the amount of selling commissions and buying commissions for the year. Under the heading "salaries" the amounts paid owners and employes are both included. The two owners in firm No. 1 were designated so as not to show their correct name, to prevent undue publicity in connection with the business of this firm. The audit shows that the two owners worked 12 months and the salaries they drew. The names of these parties, however, can be identified from the working papers. The item of $16,000 stated on sheet C as "owner sale men salaries" represented the total items of $9,000 and $7,000 as "President and Manager Cattle Sales" and "Secretary-Treasurer Hog Sales" respectively.

The next item on Sheet C under the heading Salary is "Non-owner salesmen $7,800." Under the heading "non-
[fol. 334] owners" are numbers 3, 4, and 5, 2 cattle salesmen and a hog salesman working 12 months. Total of those three salaries $7,800.

Next item under Salaries is "Non-owner, office" $4,500, composed of two employes, one the office manager and one stenographer, each working 12 months.

Item under Salaries on Sheet C, "Non-owner yardman $1,511" appears on Schedule 1 under the heading "Non-owners' salaries No. 8" and represents one yardman working 12 months.

The next item under Expenses is Total Salaries and then appears the item Bonuses Paid, which was a gratuitous amount paid to employes at the end of 1925. Witness on

referring to his working papers said that he had "Gifts in December 1925, $150."

Next item was Split Commissions Paid, Sheep. This was explained as follows: When a firm sells for another and has an arrangement thereby to,—the firm for whom stock is being sold has an arrangement with the firm selling to split the commission for selling.

Next item was Subscription to the Journal Stockman, Postage, Pencils, and Advertising Supplies. Witness explained in connection with the question as to what was included in the item of advertising, that last year Mr. Fink, Mr. Fyfe, Mr. Hallgren, and Mrs. Thornton and the witness met at St. Louis for the purpose of adopting uniform classification indicating the expenses and this classification was adhered to in this case. This uniform classification is applicable to market agencies.

The next item is Stationery and Office Expense, which includes comptometer service, envelopes, ink, clock service, printing, etc.—items that pertain to office expenses, but it does not cover the items covered in advertising. The next item Exchange Assessments and Dues, which covers expenses to the Omaha Livestock Exchange in the amount of $482.74. This last item also covers weighing and service. In general it covers bills paid to the Omaha Livestock Exchange for services rendered.

Witness, asked what was included in regard to "other respondents" under the segregation Exchange Assessment and Dues, answered, "per car assessments, cattle weighing and clearing house" and that also has particular reference to firm No. 1.

The next item is Telephone and Telegraph, which includes bills paid to the telegraph and telephone company. [fol. 335] The next item is Rent, which is for space they occupy in the building in which the hearing was held, or the Livestock Exchange Building.

The next item is Meals, which covers employes' meals that the firm pays for.

Next, Bond Premium, which is paid to the bonding company for the bonds to stockyard company and the bond to protect shippers as to their net proceeds.

The next item is Legal Auditing, which covers services for auditing. There is no legal expense for this firm but

these two are joined together. This segregation of legal and auditing is used by some of the biggest accounting firms in the United States.

Next item is General Postage, which covers stamps the firm has purchased in the period. The witness explained, however, that where a portion of the postage is charged to advertising by the firm it is left in advertising and witness does not attempt to segregate it.

"Horse and Saddle" is for the rental of a horse to ride around the yards and enter the pens. "I suppose, all over the yards." That item, Horse and Saddle occurs very frequnetly in firms that have been audited, covering as rental of a horse to make it more convenient for them to get around in the yards, that is a very common circumstance in this line of business.

The item of Legal and Auditing does not cover any auditing done by the Packers and Stockyards Administration.

After Horse and Saddle, the next item was Travel and Entertainment, amounting to $129.90, which includes traveling of men whom the firm employs to go out into the country and solicit business; includes the railroad fare, hotel bills, and items of that character.

The next item is Depreciation, Furniture and Fixtures, $462.62, which is based on approximately 15% of the valuation, which appeared a trifle high; the witness concurred with the auditor but they allowed it and it so appeared on the books of firm No. 1.

Where items were ambiguous and could not be explained from the books they were put in as "unexplained items." Auditors were instructed to ask questions regarding ambiguous items appearing on the books and try to find out what they were. In the case of firm No. 1 they were instructed to seek this information from the office manager. The same course was pursued with respect to other respondents audited under witness' supervision.

[fol. 336] The next item was insurance, $300.20, which covers compensation insurance, fire and theft, and insurance to protect the firm against stolen cattle coming here that they might sell in the course of a year. Fire and theft insurance is on personal property.

The next item is Donations, which are donations to charitable institutions which we allow as operating expenses. But this does not include any item under Bonuses Paid.

Next item is Local and State Taxes on property used in the business.

Next is Errors and Adjustments $12.44, covering minor items in the nature of the business.

Next is Miscellaneous, made up of items that do not properly classify under any of the other headings that have been mentioned.

"Q. The total of all those expenses is stated as total operation expense, and then appears an item Net Operating Income. What in general accounting practice does that mean?

"A. That is the operating results, the profit or loss to the firm's operations for that period. If a gain, shows as net operating income; if a loss, net operating loss."

Then appears a heading, Other Deductions, and under it Bad Accounts charged off $28.37, which are accounts that they charged off because considered uncollectible. The firm charged them off.

The next item is Net Gain, which is the net result of all operations.

Witness was asked why the item of Bad Accounts Charged Off was not included under the heading Expenses, and answered "Because we view the livestock commission business as a cash business and there is no need of a bad account."

On the next sheet is a heading, Reconciliation of Net Worth Year Ended December 31, 1925, referred to as Sheet B. The purpose of this reconciliation of net worth is to show how the difference occurred in net worth from the beginning to the end of the financial period under review.

First item is Net Worth Dec. 31, 1924. Then there is a [fol. 337] subheading "additions" and under that "net gain." And this item coincides with the net gain on sheet C.

Next item is Income from Minor Items, which is income received during the year that applied to a prior period. "Interest received might be an example. Interest received in 1925 applying to 1924."

Next subheading is Deductions and under that appears the first item, Dividends Declared. It is an item commonly

found in all corporations of dividends declared by the Board of Directors, charged to Surplus. Dividends are paid in cash.

Next item is Income Tax 1924 $774.86, which is the total income tax for the year 1924.

Next item is Compensation Insurance $32.60, which means that the firm paid compensation insurance based on the payroll of 1922 and had an additional assessment rendered against it in 1925 covering the men.

The next item is Total Deductions, and then appears an item Net Worth Dec. 31, 1925, which coincides with Net Worth on Sheet B.

The witness reviewed every item in this financial report of firm No. 1 and compared those items with the work sheets that are used in his present examination. He discussed those items with the auditor who under his supervision made the audit and financial statements.

Witness was asked if he satisfied himself that this financial statement correctly reflects the books and records of firm No. 1, and answered "Yes, sir, I believe it does."

Cross-examination:

Mr. Shortell on Exhibit 7. Witness arrived in Omaha, on his last trip, March 3, 1926, and the audit of firm No. 1 was commenced on January 2, 1926, and when Mr. Shortell arrived Mr. Fink was in charge. Mr. Buffkin was in charge of the audit from the first of January to the 8th of February. Mr. Buffkin is an accountant with the Packers and Stockyards Administration and was in charge of this market until the arrival of Mr. Fink, and Mr. Shortell, the witness, thinks that Mr. Buffkin audited the firms prior to Mr. Fink's arrival according to the classification adopted at St. Louis. He based this upon the working papers and reports. Mr. Buffkin knew from his experience how he should audit.

[fol. 338] "Q. And these audits were not made under your supervision from January 1 until the time you arrived at this market?

"A. All the audits were made under my supervision, no audits went through, were typed or finished considered as complete, until I had reviewed them all.

"Q. You said that you had compared this Exhibit No. 7 with the original from which it was taken?

"A. From the working papers."

Witness could not tell how long it took to accumulate the Surplus referred to in the exhibit.

At the bottom of the sheet there is a total of the current liabilities and a total of the net worth. Witness was asked what the $17,000 at the bottom of the sheet indicated.

"A. It indicates that $4,497.77 is current liabilities and the balance is net worth."

Referring to Sheet C of Government Exhibit No. 7, the first item appearing thereon is Commission Selling, $39,000 odd dollars. Witness could not tell how much of the commission was for selling cattle; stated that the work on this phase of the matter had been started under his supervision "in the last ten days and that information is now being gotten from the account sales." It would be possible to segregate the amount of commissions received from the sale of the three species.

Asked if it was possible to determine the amount of money derived from the sale of calves, answered "not in all instances, because they join cattle and calves together and put the commissions as a total sometimes."

Witness has not made a study of the tariff charge at this market.

Asked how long the president of firm No. 1 had been in business, witness could not state. Does not know whether he sells cattle. Stated that he knew that the president is manager and cattle salesman but he doesn't know the man and never saw him. The secretary and treasurer is the hog salesman.

Does not know whether the company was incorporated; hasn't examined a copy of their charter. He does not know if they have been classified as a personal service corpora-
[fol. 339] tion. Does not ordinarily follow the accounting practices used by the Treasury Department of the United States. He accepted the figure that the firm wrote off for depreciation if it was within reason at all. The work sheets show, in case of firm No. 1, that "it is a bit heavy but it was allowed, however." The Christmas gifts were classified as "bonuses," which Christmas gifts were given to employes, so witness understood, and given in cash. If they had bought Christmas presents and given them to the employes it would be put down to Miscellaneous Expenses.

Exhibit C of Exhibit No. 7 of firm No. 1 covers three non-owner salesmen, two of whom sell cattle and one sells hogs. Witness doesn't know what kind of cattle they sell. In regard to the division of time where part of the time is devoted to the sale of cattle and another part to the selling or handling of hogs and sheep, tried to get an idea from the people in charge, either the owner or the office manager, as to approximately how much time they devoted to each activity. These people are in a better position than anyone else to give us an estimate of approximately how much time they devote to each, but did not estimate how much time the yardmen devote to the three classes mentioned. He had segregated a great many of the firms on advice of the office manager as to what time is concerned in each activity. Witness did not know how many cars of animals were sold by employes No. 4 and No. 5. Hasn't made any attempt to compare the salaries derived from the sale of different species with the income from the service of that employe or with respect to the owners. Asked if the item covering advertising of $6,000 was spent during the year for advertising:

"A. I would not say it has been spent. This particular firm keeps a deferred asset for advertising, supplies on hand, and some of this $6,359.61 is charged off from the assets on hand at the beginning of the year."

Cannot state how much of this advertising was devoted to the solicitation of cattle, sheep or hogs. With reference to stationary and office expenses amounting to $325.25 could not allocate that to the various species, and the same is true of telephone as a direct expense. No attempt has been made to make these segregations. Cannot segregate the rent of $840 as a direct expense. Cannot allocate it indirectly without giving this quite a little thought. Witness thinks these allocations could be made indirectly. Same is true with reference to meals. Same applies to [fol.340] bond premium. Firm made some segregation of postage and put some postage in advertising, and auditors left it there. There was no segregation with reference to the different species made by the firm. The $365 for Horse and saddle contained an item for horse shoes. The records of the firm did not show whether the firm owned

the horse. Witness stated that this might be for the board of a horse. The horse does not appear under the fixed assets of the corporation.

"Q. Now, there is an item of Furniture and Fixtures Depreciation. Did you show a depreciation on the horse in that case?

"A. I have no information at hand to show that they owned a horse. That is all furniture and fixtures."

Witness does not believe anybody has a segregation of insurance applicable to the cattle, hogs and sheep.

Thea mount of net gain was $403.20. Charged against Surplus $5,807.46. The value of the livestock sold by this firm was $4,292,357.10 but did not segregate that as to cattle, calves, hogs, or sheep. The percentage of profit of this concern compared to the amount of business would be very small.

"Q. With reference to the total amount of commissions collected, what is the percentage, what percentage does the profit bear to the total amount of commissions?

"A. 984/1000 of 1%."

Witness has never been in the office of this firm for the purpose of examining the records. Asked if he had ever compared the exhibit with the records of the concern, answered, "No, this is his audit."

"Q. I asked you if you had.

"A. No.

"Q. Were these particular papers sent back for re-working by you to Mr. Burns?

"A. No, they were not."

"Q. What was the income tax for the year 1925?

"A. We did not get that. They wouldn't pay that probably until March 15, 1926. It is not on the books."

[fol. 341] Witness was asked why he testified on direct examination that the dividends were paid in cash.

"A. That was a little presumptuous probably on my part, if I did. I don't know whether it was paid in cash or not; charged to Surplus."

Witness was asked in regard to the instructions in regard to approximating items and whether these instructions were in writing.

"A. Instructions were to take off the drive-ins and truck-ins and yard sales in segregation as to species, as to number of head, and multiply the number of head, for instance drive-in hogs and cattle and sheep and yard sales, the same manner and then to take the straight cars; take part of that off and average them to get the average of what the commission, average commission, the firm was making on a certain number of carloads, and hogs and sheep the same way under straight cars to try to arrive at the total income was for straight cars. We have the number of head in the cars and that left the mixed cars, which completed the balance of the statement.

"Mr. Boyd: That was admitted to be an erroneous way of doing it?

"A. Yes.

"Q. And that has been changed?

"A. That has been changed.

"Q. What is the present method?

"A. Take it directly off the account sales.

"Q. Has that been done in the case of firm No. 1?

"A. It either has been done or will be done."

Witness was asked about the capital used in the business and how it was used.

"A. It was used in the payment of expenses and the payment of proceeds of shippers. Some of the capital was used as fixed assets. Not all of the capital was in the bank."

[fol. 342] Witness doesn't know as a matter of fact whether they use a dollar of the capital or not but that it was there for the purpose if they needed it. They charge dividends to surplus. Witness views the livestock commission business as a cash business and there is no need for bad accounts.

Witness was asked if he believed if the commission house would sell to a person whom they had reason to believe was solvent, and due to some unforseen cause that purchaser became insolvent between the time the sale was made

and the time of remittance to the country, and the commission house failed to get its money, if it would be a bad debt.

"A. We make exceptions.
"Q. You would consider that a bad debt?
"A. Yes."

Witness insisted that such a case was exceptional.

Witness was asked, "If a man purchases a car of livestock and ships it out of this market to a purchaser, and the animals are destroyed by an act of God while in possession of the carrier, whose loss would that be? Before the purchaser paid for them?" This question was asked to see if witness would consider that kind of a case as a bad debt.

"A. If those exceptional cases arose we would consider them as bad debts."

Witness was asked what he meant by "deferred assets under advertising supplies."

"A. Advertising supplies on hand which were not used up, advertising supplies on hand."

Any supplies on hand would be deferred assets, that is, deferred to profit and loss.

Witness doesn't know any of the members or employes of this firm personally. He hasn't any opinion with reference to the amount of salaries being too little or too small. Witness thought the best judge of the work of an employe would be the person that hires him, the owner of the corporation.

Direct examination resumed:

Exhibit 7 was compiled in the shape in which it was offered as an exhibit, after the arrival of Mr. Shortell, but [fol. 343] the work by Auditor Burns was done in part at least before Mr. Shortell's arrival. Mr. Burns was under the supervision of Mr. Fink for about a week before Mr. Shortell's arrival.

In accounting practices it is regarded as immaterial as to what state the firm was incorporated in, in the making

of a financial statement. The object of the financial audit was to show the financial condition of the firm at the beginning of the year 1925 and at the close of the year. It does not undertake to show the wisdom or advisability of the expenditures, but merely the facts. As a rule the auditors deal with the office managers. If the auditors do not get a clear explanation from the office manager, they are directed to take the matter up with the owner. A financial audit would not ordinarily show the time each employe devoted to the sale of various kinds of livestock. If the firm members drew amounts and charged them to Expenses as salaries, we incorporated them in the profit and loss account. If they drew no salaries we of course did not make any entry. Whatever the firm entered on its books as salaries the auditors were instructed to incorporate in the financial report as salaries. The income tax must have been paid in cash. Dividends were declared out of Surplus. Firm No. 1 must have employed capital in the business.

Recross-examination:

The net gain means net profit from all operations. It is customary to charge salaries in the case of corporations for the service of officers. Witness knew nothing about what transpired at this market prior to his arrival. Witness did not tell Mr. Burns what to say to the manager. Witness was in consultation about every audit that was made, with the accountant. Witness has no written instructions from the chief of the Packers and Stockyards Administration as to his duties in connection with his audits. Mr. Fink is acting in charge of the Auditing Division, and since witness' arrival at Omaha he assumed direct charge of the auditors. Witness named the following auditors who worked under him: Burns, Kohler, Westinghouse, Svoboda, Bollas, Buffkin, Osman, Jacoby, Meuse, Mrs. Thornton, Wurfel, Warner, McGuire, Yockey. All of these auditors are now working on audits at this market.

Direct examination resumed:

It is a common practice for an auditor to use assistants in making audits, and in such cases the supervising accountant does not compare very item of the records of the

firm audited. He has to rely to a certain extent on the ability of the man making the audit. The one in charge [fol. 344] compares all work in general with the working papers, that is reports, to see that they are substantiated, and the witness has supervised this audit in the usual manner with ordinary accounting practices.

Firm No. 1 audit was completed March 19, 1926, and was begun March 15.

Exhibit 8 is the financial report of firm No. 2. Witness' testimony in explanation of the structure, classification and general meaning of the various classifications in Exhibit 7 applies generally also to Exhibit 8. It is arranged in the same manner as Exhibit 7. There are some items, however, in Exhibit 8 which are not in Exhibit 7. The first one is Good Will on the balance sheet. On the balance sheet of Exhibit 8 appears an item of Good Will, $7,200. Witness has no explanation to offer in regard to that but it is accepted as assets where good will is so shown. If there is no good will shown on the books the auditor could not set it up himself.

Bank overdraft is the next item that appears on Exhibit 8 which is not on Exhibit 7. It is a back bank overdraft, where the amount of checks which they have issued are more than they have on hand in cash at the bank. Failure of that item to appear in Exhibit 7 indicates that there was no bank overdraft in case of firm No. 1.

Notes Payable is the next item on Exhibit 8 which is not in Exhibit 7. This shows two notes payable that were entered in the books as of November 15, 1914.

Next item which is different is Additional Capital Invested, which is a liability due to one of the stockholders by the concern, which represents the liability of the concern to a stockholder. It ordinarily would be put under Liabilities but it makes no special difference in this case because it remained the same at the end of the year. It properly belongs under Current Liabilities.

The next item on Exhibit 8 which is not on Exhibit 7 is Undivided Profit, which means profits which were on hand at that period and not paid out in dividends or credited to the Surplus account.

The next item appearing on Exhibit 8 and not on Exhibit 7 is Real Estate. This means that land and buildings are acquired under the period under review, by the firm. [fol. 345] The real estate in question consists of 88 acres located in Holt County, Nebraska.

The next item is Miscellaneous Income. Miscellaneous Income represents income not derived directly from the sale or purchase of livestock at the local yards. Operating income means the income derived from the operations of the firm at this market.

The next item where there is a difference is Deductions, which means errors—small errors—in commissions that were adjusted later.

The next item appearing on Exhibit 8 and not on Exhibit 7 is Extra Halp under the heading of Non Owners' Salaries. This is extra yard help that the firm had to hire in busy times of the year rather than have a permanent man in addition to what they have.

The next item on No. 8 and not on No. 7 is Unexplained Item under the heading of Expenses, which is an item of expense which the auditor took up with the office men at the time he was there and could not get any explanation as to where it belonged.

The next item on Exhibit 8 and not on Exhibit 7 is Miscellaneous Other Income, which is adjustment of old accounts, adjustment of feed accounts, adjustment of personal accounts, small item received from the bonding company,—a few cents. The total of that item is $43.73.

The next item on Exhibit 8 and not on Exhibit 7 is Miscellaneous Other Deductions, which means general items of expense which do not classify under the heading of Operating Expense. In connection with Exhibit No. 8 it includes bad debts, interest paid, loss on eggs, adjustment of feed, and yardage account.

There was a net loss shown on Exhibit 8 while there was a net gain on Exhibit 7. The items on Exhibit 8 not appearing on Exhibit 7 speak for themselves.

Old Accounts Recovered were accounts charged off prior to January 1, 1925, and recovered during that year.

The next item Adjustment-Gross Sales Account means gross sales account in the ledger but not in the balance. In order to adjust it they made this adjusting entry, which was made for the purpose of making the ledger balance.

[fol. 346] Witness said "It is of the firm's making; we did not make it."

Item of $116.67 was written off from the books to Profit and Loss Account in adjusting collections.

Next, Adjustment of Branded Cattle account, is $63.25.

Next item is Adjustment of Freight account. Adjusting of freight matter is adjusting a liability to the yards company. These adjustments were made on the books of the firm.

The next is Sale of Shares in Addressograph, which is a rental paid to the firm for the use of their addressograph.

The next is Sundry Accounts Loss $1.38. Personal account charged off by the firm.

The next subheading is Deductions. The first item under that is Net Loss 1925. The next is difference in Balances, which is the difference written off by the firm when their books were audited. It was written off in June, 1925, for the purpose of putting the books in correct balance.

The next item under Deductions is Old Accounts Charged Off, which refers to accounts uncollectible charged off by the firm.

Schedule No. 1 of Exhibit 8 is headed "Statement of Salaries for the Year Ended December 31, 1925," amounting to $15,830.89. This is segregated as to owners and non-owners. Appears on Schedule No. 1 and on Sheet C. On Sheet C it appears in a summary form segregated as to owners and non-owners and further as to non-owner salesmen, yardsmen, office, and extra help. And on Sheet C it appears as an operating expense of the business. An item appears "Nos. 3 Yardmen Cattle, five months half time" and witness explained that this meant that the time was divided between yarding cattle and yarding hogs. Item No. 6, "Hog Yardman 5½ months" the same. The information in regard to the half time on each species was obtained by inquiry from the office manager, and this same explanation applies to other employes on half time.

The foregoing constitutes practically all of the items appearing on Exhibit 8 which were not on Exhibit 7.

Cross-examination:

Witness said he considered good will a proper charge to Assets.

[fol. 347] A stockholder of the company let the firm have some $1,100, which appeared to be a sort of a loan. This individual item should appear under the heading of Liabilities rather than under Net Worth and it was an oversight on the part of the auditor in putting it there. It was an oversight on the part of the witness in leaving it there. There were no other errors in this exhibit. There was a typographical error of 50¢ on Sheet D. On Sheet D, Schedule No. 1, there was a typographical error of 99¢ instead of 98¢ Total salaries, $15,830.89.

"Q. Were you asked if the operating income was all the income derived from operation on the stockyards?

"A. I believe I was.

"Q. And you answered 'yes'?

"A. I believe I did.

"Q. Now, the answer you want changed?

"A. Yes, I believe it should be changed.

"Q. So that miscellaneous income is included in the total operating income?

"A. Yes.

"Q. And you simply made a segregation between buying and selling commissions?

"A. And miscellaneous income. That is what I should have stated."

There is a charge of 15¢ a head for clearing traders. Charge of $7,580.05 was charged to profit and loss on the books. It was necessary to make segregation of expenses all the way through with every firm. Testimony that the audits reflected what was found in the books meant as to the net results. Auditors made no changes in the books. If they found items in profit and loss that they thought should go into Surplus, they went into Surplus, in making up their statements.

An item of $3.70 which was included in Errors and Adjustments, is in the Profit and Loss account somewhere.

As to an item of $6,496.57, which is an item on the books in a suspense account, all of those accounts were charged off; were incurred in 1922 and 1923.

[fol. 348] "Q. Wasn't it a defaulting bookkeeper?

"A. I really cannot tell you, I don't know."

Was asked if it wasn't an operating loss.

"A. I do not believe I would so consider it.
"Q. What do you call it?
"A. I would think it properly classified where it is."

Witness said that they had allowed all the insurance commission men have. He would not allow such a defalcation as an operating expense where there was no insurance carried.

"Q. What difference would it make, in your opinion?
"A. Well, the difference would be in my opinion that the firm has slipped on their lawful rights in a way by not procuring insurance, and because they have there is no reason why it would be allowed as an operating expense.
"Q. Referring to Schedule 1 under Cattle Department No. 1 Salesman Full Time $6,000, is that an explicit or implicit wage?
"A. That is the amount of salary charged to the profit and loss account for the individual holder."

Witness does not know any of the persons shown on Schedule No. 1.

Asked where witness got the information that the yardman divided time between cattle and hogs, he answered "from the office manager" which meant the bookkeeper, No. 9.

The firm lost $1,177.78 in the commission business at Omaha. The economic capital of this firm on December 31, 1925 was $17,726.15. This represents the total assets. Economic capital is the total assets owned by an individual, partnership or corporation. The Exchange memberships were not included in the exhibit. Attention called to the fact that they would have to own two to operate under the laws of the exchange; witness imagines that they own them personally and are not shown on the books of the different concerns.

[fol. 349] Direct examination resumed:

If the firm had set up the exchange memberships on the books, he would allow it.

If they did not appear on the books, we did not make any adjustment because maybe they prefer not to use them

on the books. The purpose of this audit is to properly set up the financial condition of the statement of operations according to accepted usage by accountants in general. The segregation in accordance with uniform classification puts all firms on the same basis. The variances between the audits and the books is confined to segregation and adjustments. There were certain classifications in some of the firms that were incorrect. For instance, the bookkeeper might have charged something to advertising that should have gone elsewhere and they would adjust that to another expense account if they thought it was more correct. That would merely change the classification. An item appearing on the books as one item may have been put into two or more classifications but the total amount of that item would appear in the audit either as one or the aggregate of several classifications.

Good Will may properly be included. Asked under what circumstances, he stated "I would say on the acquisition of a firm, one firm bought out another, or on the selling out of a firm." This means where a price is paid for good will. In auditing the commission firms at Omaha, good will has been accepted in all cases wherever a firm shows it on the books.

It is the general practice among representative houses to insure their employes who handle cash. If a livestock commission firm, and particularly No. 2, should put such a reserve in lieu of insuring its employes it would be the same thing as taking their own risk. The $1,737.21 representing the net loss was after the owners' salaries had been paid. The amount of salaries of owners appeared on the books of the firm.

Recross-examination:

Witness had to use work sheets in order to testify in this case.

"Q. Was there a surplus in this business at the time this money was charged off—something over $6,000—an actual surplus set up?

"A. Yes."

Redirect examination:

"Q. Mr. Shortell, with reference to the item—Additional [fol. 350] Capital Invested, carried on Sheet A, Govern-

ment Exhibit No. 8, do you wish to make any correction in that item?

"A. Yes.

"Q. Will you state what correction you wish to make?

"A. That I have been advised by the auditor and in refreshing my memory I know that it was taken up with the auditor and that we intentionally left it where it is. I stated this morning in testimony that I remembered in reviewing this report. I want to correct that, that there is no error made; that this capital invested by stockholders was invested for the purpose of being permanent, and was permanent from the beginning to the end of the year 1925 and was invested prior to the beginning of the year 1925."

Witness compared the accountant's working papers with the balance sheets at the beginning and end of the calendar year 1925, and the statement of profit and loss and other items that were not in the statement of operation. Witness compared the final result of financial condition as shown on Sheet A, Sheet B, Sheet C and Sheet D, Schedule 1, with the audit which the accountant had in his working papers to suppose these items. And before witness passed the report he discussed the various items with the accountant. The auditor who made this report could not testify without the working papers because it would be too much to carry in his memory.

Recross-examination:

Exhibit 8 is a consolidation of the information contained in the working sheets. It is a summary of what is shown there.

The subscription to the Journal Stockman was classified to Advertising because it was following the uniform classification we adopted. We thought it belonged to advertising. On the books of the corporation they carried it as Journal Stockman. Mr. Buffkin and witness prepared the work sheets in the case of firm No. 2. The amount shown by the work sheets as Extra Help Employed by the firm was $26. The item of $37.50 appearing on the work sheets was an item of salary that was due to employe No. 9 which was either received or credited to his account.

The extra help shown refers to the $26.

[fol. 351] Redirect examination:

Witness was asked, "What effect, if any, does the inability of an accountant to draw a technical distinction between an explicit and implicit wage have upon his practicability to audit a set of books?"

"A. None. The terms have not been used by any of the accountants that witness has come in contact with for four years."

Exhibit 9 is a report on firm No. 3 for the year ending December 31, 1925. His testimony relative to the manner of making Exhibits 7 and 8, and the supervision thereof, is also generally applicable to proposed Exhibit No. 9. Exhibit 9 does not contain any segregations which are foreign to the segregations explained in witness' testimony in connection with Exhibits 7 and 8, that is, main subheadings. The main subheadings are the balance sheet, current, fixed and deferred assets, good will, liabilities, net worth, current liabilities and net worth, profit and loss statement with the income, expenses, and other income and other deductions, net worth, or additional deductions. There is one item that is indifferent, and that is Half Commission for Selling Sheep on the salary schedule. That is a commission paid as salary by the firm to another firm who handles the sheep for them. That is a common item on this market and we put it in as Commission Paid as Salary. There is an item on Schedule D which is Adjustment of Bank Exchange existing on Dec. 31, 1924, to Net Worth. It was charged off in 1925 but applied to 1924, so that we adjusted the net worth right on the schedule. The item reads "Adjustment Back Bank Exchange to Expenses."

"Q. How many owners are there in this business?

"A. Sole owner. Owner does not draw a salary. Net operating profit from the business for the year 1925 was $6,906.70. That would be approximately the same as some other salaries for people engaged in similar services on the market, or less."

This exhibit does not reflect the amount of commissions derived from the sale of the different species of livestock of this concern. This exhibit does not show the amount

of livestock actually sold by these people nor the livestock sold by them except cattle, or the grade.

"Q. What is the yard company's deferred assets?

[fol. 352] "A. That is an item on the books that is incorrect. We left it there without adjustment, following the same policy with every firm in the yards.

"Q. Accounts payable, then?

"A. Yes, that is obviously incorrect. We left it there on the theory of giving them a chance to check it up and adjust it; straighten it out and charge it off if they cared to.

"Q. Do you know whether or not the amounts shown for cash sales were actually paid into the business in cash?

"A. It was, according to the auditor's comments."

In regard to good will, witness read from working papers as follows: "The amount of good will, $5,000, consists of a credit to a former partner. The former partner's account would cover good will and also an allowance for furniture and fixtures. The sole proprietor estimated the furniture and fixtures to be worth about $1,000 at the present time."

Firm No. 3, Exhibit 9, was started March 22, 1926.

Mr. Fink was supervising the activities of the auditors when witness arrived on March 3. Prior to Mr. Fink's arrival Mr. Buffkin, who made the audit of firm No. 9, was supervising his own work. Mr. Buffkin was just making audits in the regular way. None of the reports were reviewed, however, until witness arrived. He reviewed them all.

The audit of firm No. 4 began March 22. Witness' testimony as to the making and supervising of the audit of firm No. 1 and financial report Exhibit 7 is also generally applicable to the audit of firm No. 4 and the making of Exhibit 10.

Exhibit 10 is a financial report on firm No. 4 at this market, showing financial condition of firm No. 4 as of December 31, 1924; also showing financial condition of the firm as of Dec. 31, 1925; profit and loss account for calendar year 1925; reconciliation of net worth for the year 1925; and statement of salaries for the year 1925.

In Exhibit 10, the main subheadings correspond with the [fol. 353] subheadings already considered. The first item that is different is Other Investments under the heading of Current Assets as of Dec. 31, 1924, which is the amount

that covers stock in other enterprises which is owned by the firm, or shares of stock. The next item which is different is that of membership, which covers four memberships in the Omaha Livestock Exchange. Witness explained that the four memberships now under consideration were on the books and records of this firm whereas there were no memberships on the books for the preceding firms.

Cross-examination:

Witness was asked if he had an item of $507.30 as a reserve. Answered in the negative. He had charged it off because it was taken up with members of the firm. They couldn't explain what it was—what reason there was for its existence on the books as an asset. The working papers show as follows in connection with this item: "The account called 'Special Fund $507.30 as of Dec. 31, 1924, is also contained herein. Mr. —— explained this account as covering supplies and stated same should have been charged off as an expense. Several charges to Expense were made during 1925 and as no inventory setting forth the contents of this account was obtainable, same was written off by me to Net Worth Deductions. Said write-up is not on the books." Under Accounts Receivable the $3,829.22 consists of accounts receivable from employes and trade. The former is accounts due from employes. Books are kept on a cash basis. Item of $500 for expenses for 1925 was charged off because these supplies could not be ascertained, as the owner did not wish to make a statement of what they covered. Under the item "Office and Operating Expenses Fixed Assets" there is no depreciation taken by the firm and charged off to profit and loss for the year 1925. We have an item of $97.50 under Current Liabilities called Accrued Liabilities. That is accrued rent. That item does not appear on the books. It was set up by the auditor. Another entry which was set up by the auditor is a credit of $55.22 for interest received, which was not shown in the firm's books and records we credited to other income. It was shown on the pass book. The audit reflects the cash in bank as shown on the books and records of the corporation. Witness considered all stocks and bonds Current Assets in the classification, owned by the commission firm.

Redirect examination:

The pass book of the firm is one of the books taken into consideration in making an audit of the firm's business.

Exhibit 11 is a report similar to Exhibits Nos. 7, 8, 9 and 10, and is a financial report on firm No. 5. This audit was [fol. 354] begun subsequent to witness' arrival and the testimony that he has given relative to making the audit of Firm No. 1 and the financial report of that firm, and the supervision over this audit, applies generally to Exhibit 11. There are no segregations of the main subdivisions that are different nor are there any items which are different.

Exhibit 12 is a financial report on firm No. 6, similar to the others. There are no different subheadings but there is an item that is different, which is Reserve for Depreciation on the office and operating equipment. This means that instead of writing a depreciation directly off the assets, that reserve was set up and it was charged to profit and loss. It would not make any difference as far as the profit and loss account is concerned. The firm did not set up a reserve on its books; the firm charged it off the books as assets but the auditor reinstated the amount they charged off and deducted it in the reserve underneath it. The result, however, is the same. Another difference is the gain on the Fixed Assets on Sheet D. This is a small amount.

Exhibit 13 is a financial report along the same general lines as Exhibit 10, covering firm No. 7 at Omaha. The main subdivisions in Exhibit 13 are similar to those in the firms already referred to. Referring to the item of Liberty Bonds, witness testified that that was shown as a current asset because it is liquid and can be converted into cash easily.

"Q. Is there any other item which to the best of your recollection is foreign to those you have already testified to?

"A. Branch Account, shown under the heading of Fixed Assets at the end of both the years 1924 and 1925.

"Q. What is meant by Branch Account?

"A. In this particular firm this amount represents shares. The wording in the working papers is 'The amount represents share of cash for purpose of operating capital

fund in opening and operating an office at another city.' There are no other foreign items in this exhibit."

Exhibit 14 is a financial report of firm No. 8, which was started after March 3. There are no foreign subdivisions in proposed Exhibit 14.

[fol. 355] There are foreign items. The first one is real estate under the heading of Deferred Charges on the balance sheet as of Dec. 31, 1924. That item was placed under Deferred Charges because it was of doubtful value as of that date and later charged off the books apparently as a worthless asset. That means real estate owned by the firm. Witness said he might clarify this further by saying that the auditor made a notation in his working papers that the land covers land foreclosed to protect cattle loans in the following year, 1926; there was a reorganization and the new owners would not accept the land and pay the taxes on it. It was therefore considered of no value and written off the books.

The next item that is different is Notes Receivable Discounted, under the heading Current Liabilities in the balance sheet as of Dec. 31, 1924. That item represents notes received which were discounted in advance of maturity date for cash. There is a contingent liability to meet those notes if the maker does not.

The next item which is different is individual deductions on Sheet D. The witness believes they are self-explanatory. The word "prior" after "insurance" refers to a prior period,—prior financial period. It was prior to Jan. 1, 1925, and not current. It contemplates insurance paid in advance. The words "depreciation prior" is that portion of depreciation that was written off in 1925 to a prior period. The item of Deferred Expense under Deductions on Sheet D means expense applied to a prior period.

The next item is Land of No Value, $6,136.53. That item also appears on the opening statement showing the financial condition as of Dec. 31, 1924, Sheet A. That refers to the same amount that witness has testified about. There are items on Sheet D which are charged off, pertaining to cattle loans. That is, cattle loans and sales interest in connection with them, and legal expense in connection with the cattle loans. Those items arise from the cattle loans

business rather than from the livestock commission business. (Objection on the ground there is no evidence showing, nor any reason to assume, that the livestock loan business is not part of the commission business.)

By "livestock commission business" witness means the selling of livestock on commission on the Union Stock Yards, Omaha. There are no other different items in Exhibit 14 requiring explanation.

In accounting practice it is possible to audit on a cal-
[fol. 356] endar year basis the books and records of a firm which are on a fiscal year basis. In so auditing, it makes no difference on what year basis such books and records are kept.

All the audits introduced in evidence were for the calendar year 1925. Some of the firms have a fiscal year not the same as the calendar year, but that was adjusted.

Exhibit 15 is a financial report covering firm No. 9. It does not contain any subdivisions that are different but does contain some items of a kind not heretofore explained. There is a note on the bottom of the balance sheet of Dec. 31, 1925, Sheet B, that does not appear on any prior exhibit, which is self explanatory. Aside from that there is no sub-heading not discussed heretofore.

Exhibit 16 is a financial report of firm No. 10. No subheadings foreign to those heretofore explained, and no items foreign. The firm was not engaged in any business other than selling and buying livestock on commission.

Exhibit 17 is a fiancial report of firm No. 11. First subdivision different from others is item of Reserves under the heading of Liabilities and Net Worth, both on the balance sheet of Dec. 31, 1924 and Dec. 31, 1925. Auditor was instructed to receive this heading as shown by the firm. Auditor did not attempt to separate the Surplus or Undivided Profit into Reserve. Auditor did not go back of 1924, but for the period Dec. 31, 1924 to Dec. 31, 1925. The heading consists principally of the note and interest which was credited to Reserve, and also additional interest. The purpose of the reserve was not shown. The next subheading different is on Sheet D under the heading Deduction charged to Reserve. That is an item under the subheading rather than a subheading itself, there being no other different subheadings. The words "charged to Re-

serve" should be "credited to Reserve." Exhibit 17 indicates to witness as an accountant that firm No. 11 is engaged in other business than that of selling and buying livestock on commission,—that of clearing for someone, which means one firm collects the money due for the sale of livestock and pays the profits out to the original owner for another individual ordinarily who has not those facilities at his command. Clearing is done by some firms and not by others. On Sheet D there is an item Accounts Re- [fol. 357] ceivable $30,000 odd. This consists of personal accounts receivable,—for the most part of doubtful collectibility, and also small accounts from a former employe, and miscellaneous accounts receivable.

Exhibit 18 is a financial report of firm No. 12. Does not contain any different subheadings nor any different items from those explained. Accounts Receivable included open accounts to the firm for which the firm has not received any notes, and these open accounts arose from transactions of different kinds with different firms. Witness does not mean that those items in Accounts Receivable in this report arose from exactly the same transactions as in former exhibits, but that in each exhibit they represent accounts owing to the firm which are not covered by notes.

Exhibit 19 is a financial report of firm No. 13. It contains no subdivisions nor items different from the exhibits explained heretofore.

Exhibit 20 is a financial report on firm No. 14. Contains no subdivisions not heretofore explained nor any items not heretofore explained. Accounts Receivable covers items of doubtful collectibility. These are open accounts; same general explanations would cover them. Proprietor's Investment is net worth capital. It has the same meaning as capital so we did not distinguish between the two. Witness is not stating whether accounts of this particular firm are collectible or not, has not looked it up.

Exhibit 21 is the financial report of firm No. 15. Contains no general subheadings different. Contains one item not heretofore explained, which is Additional Investment on Sheet D. This means either capital added to the business in addition to the original capital or the excess of the salary due the individual over his drawings of that salary invested in the business permanently. That would be ad-

ditional investment. In Exhibit 21 it has either meaning.

Exhibit 22 is the financial report of firm No. 16. Exhibit contains no general subheadings and no items not heretofore explained. The item "other" under Deductions in Sheet D of this exhibit, amounting to $4,523.84, which corresponds to the net gain of the firm composed of two owners who did not draw salary, was previously explained under the heading of Withdrawals in all the other concerns.

Exhibit 23 is a financial report of firm No. 17. Does not contain any subheadings not heretofore explained. The one item not explained, which is on Sheet C, last item [fol. 358] under the heading of Other Deductions, covers interest on a personal note of the owner, which item is practically self-explanatory.

Exhibit 24 is a financial report of firm No. 18. It contains no main subheadings not heretofore explained. There is an item marked Postage on Hand, which is shown as a deferred charge to Profit and Loss on Sheet A,—a small amount. There is also an item under the heading of Net Worth, Branch House Account. This item under Branch House Account represents a liability of this firm to the head office for moneys advanced to this firm to conduct its operations. On Sheet D, Advances to Head Office, same thing as a withdrawal in that sense. This is money that has been advanced to the head office and charged to the Branch House Account; another item consists of Operating Equipment charged to Expenses originally in the books. This means that an asset under the heading was charged off the books as an expense and we charged it to Surplus, not allowing it as an expense in the commission business. Asked about the item consisting of 2 automobiles charged off, a typewriter, and repairs to the car, witness answered that it does not state whether they were used in the business or not but simply shows them in a summary of expenses as being charged off. The firm charged it to Expenses and we reclassified it and took it out of Expense and put it in Surplus Deductions. We did not add it to Equipment. We didn'- think that it would be necessary because that would go reversing the firm's own entry.

Exhibit 25 is a financial report of firm No. 19. Contained no main subdivisions not heretofore explained. Item of

Salaries credited to Partners, on Sheet D, is a summary of the salaries that were charged to Profit and Loss as owners' salaries and credited to that individual account. Another item is Other Additional Investments, which covers cash or property of value and items of value that had been brought into the concern by the owners and credited to their personal account.

Exhibit 26 is a financial report of firm No. 20. No general subheadings not heretofore explained. Item on Sheet B under the heading Other Deductions and Loss on Freight Account,—witness believes in prior reports that possibly it was called Loss of Yard Company account. Same rule applies. Firm adjusted this freight account through the yard company to a corrected figure.

Cross-examination:

"Q. Is that item Loss in Freight Account an undercharge in freight which the law requires the consignee to pay?
[fol. 359] "A. I cannot state, it is a matter that they charged off. Whether it was an undercharge or whether they overlooked to charge it entirely,—it is one or the other. Has not been treated as a part of the commission business."

Witness does not allow Loss on Freight. If the shipper is dead he is not responsible and the commission firm pays it; witness says that it should have been deducted from the account sales.

"Q. How could they deduct it if the undercharge is not determined for two years later? That is what I am pointing to? Do you understand what I mean?

"A. Thoroughly, but if this is an undercharge it was determined in 1926 and should have applied in 1924.

"Q. Well, but I know you call it over deductions but do not treat it under General Expenses.

"A. No, because it is not legitimate expenses of the commission business."

Direct examination resumed:

Exhibit 27 is the financial report of firm 21. Contains no subheadings not heretofore explained. Contains an

item of unissued capital stock, which is capital stock that is unissued—not subscribed for and not paid in cash. Another item is a specific item of Depreciation under the heading, Fixed Assets on Sheet B where the furniture and fixtures are shown as one amount and the depreciation is taken on another amount. That is done in this instance because the depreciation shown there is 10% of an adding machine purchased during the year 1925. The item of Horse represents the valuation of a horse as of Dec. 31, 1925. The amount of Undrawn Salaries on Sheet D is the excess of an amount credited to the partners' account, or rather to the owners' account, in this instance, over the amount that they drew.

Mr. Boyd: "Mr. Shortell, this firm is shown to have made $536.37. What effect does the item of undrawn salaries have on that?

"A. None because the total salaries charged is the profit and loss account. The owners actually drew $3,642.63 less than shown on the item on Sheet B."

Exhibit 28 is a financial report of firm No. 22. Reserve [fol. 360] for Taxes is a different subheading on this report. This is reserve either for city, county, or federal taxes by the firm. There is an item on Sheet A of Other Investments, to cover stocks or bonds of any other company or corporation that it may have, or it may cover items in character just as shares in a building and loan association, or something of that kind.

Cross-examination:

"Q. Mr. Shortell, as a matter of fact, this commission firm has about $1,000 worth of office equipment, office and operating equipment, and that is about all they have to do business with, isn't it,—that they need to do business with?

"A. I couldn't subscribe to that, Mr. Boyd.

"Q. Well, the two memberships—of course they would need that. Is there anything else?

"A. I think they need some cash to do business."

Exhibits 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63 and

65, are financial reports of the remaining firms. Testimony heretofore given as to the manner and methods of making audits and the financial reports therefrom under witness' supervision, etc., is applicable.

The auditors made a report on the financial condition at the beginning and end of the period under review, and the profit and loss statement, and submitted those statements together with the supporting work papers to witness for review, which witness reviewed and in many instances original figures turned in were changed because witness didn't think they were right. Discussed these matters with the auditor making the audit. And that applies to all financial reports beginning with Exhibit 7 and applying to all of them.

Exhibit 34, firm No. 28, contains a subheading of Deferred Income on the balance sheet as of Dec. 31, 1924 and Dec. 31, 1925, which represents interest and discount on notes receivable,—interest which has been accrued but not due and deferred crediting to profit and loss until the interest is due. That is a common procedure in accounting practice.

[fol. 361] The general explanations heretofore given as to the various subheadings apply to Exhibits 29 to 65.

The items on Exhibits 29 to 65 have been generally explained in witness' former testimony, other than so-called extraneous items. The extraneous items are as follows: Other Income on Sheet C, firm No. 23, Exhibit 29, which covers interest received on cattle loans; Other Deductions on Sheet C represents interest paid on notes or rediscounted loans and other notes payable. Next item is on Sheet D, profit on the sale of a membership, proceeds of a draft on a branch received, sale of a saddle, and various other small credits. The total of all items is $1,705.34. Advances to the head house would cover 75%, possibly more. The word "extraneous" means those items which the accountants have set up in these reports as being extraneous to the livestock commission business conducted by those various firms.

On Exhibit 30, Sheet D, the additions to capital are shown in two items,—one is old checks charged back to the bank. This means that checks have been drawn prior, were outstanding for a long time and added back to the

bank balance in the books and credited to the Net Worth on this Sheet D. There is a small item of unlocated differences following under the head of Deductions on the same sheet.

On Exhibit 31, Sheet C, there is an item of Other Deductions, Miscellaneous, less than $100.00.

There is nothing in Exhibit 32 requiring explanation.

On Exhibit 33 there is an item of Other Deductions, on Sheet C, amounting to $21.50. This consists of presents of hats to shippers. On Sheet D an item of Other Deductions consists of Christmas Cigars used in 1924 and paid in 1925, $41.50. Loss account endorsing note, $85.33. Commissions paid to another concern for selling sheep during 1924 charged to Commissions 1925, a total of $134.45. Bad accounts charged off, total $1,982.66.

On Exhibit 34 under Other Deductions there is a total of $618.94 on Sheet C consisting of interest and discount, $457.29; bad debts charged off, $161.65. On Sheet D the other additions consist of bad accounts charged off in a prior period but covered in a current period, and salaries of partners credited.

[fol. 362] The next item, on Exhibit 35, is Other Deductions on Sheet D, bad debts totaling $3,730.14, car assessment pertaining to 1924 operations $123.62, loss on freight 1924 $15.34, loss on yardage 1924 $27.08, adjustment, adjustment of personal account $305.60, legal expenses $300.00, and partner's net withdrawal $3,606.95. Exhibit 35, Sheet D, shows Other Deductions $13,109.90, which consists of withdrawals $10,394.86. The amount received from another commission company, which is offset by net gain in the same amount, $2,470.68; bad debts for a prior period for an individual $244.36.

Exhibit 36 shows Other Deductions but it shows them as separate items.

*E*n Exhibit 37, Miscellaneous Other Income of $43.67 on Sheet C consisting of one hog replaced by yards company $30.25, post mortem hog dockage recovered from exchange $2.35, rent on addressograph machine $10.82, error in collection account 25¢. Other Deductions Miscellaneous totaled $1,109.54 and consisted of the loss of one hog $30.78, interest paid $286.02, adjustment freight and yardage account $751.71, loss account damage on one hog to Swift $4.70, loss account hog weighed back 90¢, loss account dead

hog 60¢, loss account shortage on freight $2.44, error in weight on cattle $19.00, loss dipping 70¢, adjustment hay account $10.20, adjustment insurance account 15¢, error in price of cattle $1.80, error in checks 54¢.

Exhibit 38, Sheet C, shows Miscellaneous Other Income 13¢, error in purchase account of 1¢. Other Deductions Miscellaneous total $222.20; consists of insurance and inspection charges $112.04, error in dipping 1¢, error in purchase 48¢, error in sales $31.00, error in check 10¢, adjustment of feed account $26.11, adjustment of truck account 17¢, feed account $14.09, freight account $2.20.

Exhibit 39, Sheet D, Other Deductions Net Worth total $38.17. Other Deductions $100.00, new typewriter purchased and charged into Expenses.

Exhibit 40, Other Income on Sheet C totals $20.36, Other Deductions total $49.45.

On Exhibit 41 nothing to explain. Same as to Exhibit 42.

Exhibit 43, Sheet C, shows Other Income $51.75. This was an item due to a relative of the concern,—a son.

[fol. 363] Exhibit 44, Sheet C, shows Other Deductions $1,070.46, interest $170.46 and $900.00 the chauffeur's salary of the owner.

Exhibit 45, Sheet D, shows Other Additions $1,730.37, additions to capital put in by owner $1,135.59, telegraph refund from yard company applying to 1924 $411.52, advertising charge refund received from yard company applying to 1924 $147.00, old checks canceled $36.20. The item of Other Deductions totals $25,875.14; consists of withdrawal of capital of two partners amounting to $6,925.14 and the balance was the distribution of profit to the partner and a widow of a partner.

Exhibit 46, Sheet D, shows Miscellaneous Additions to Net Worth $134.82. Consists of shortage in cash and error.

Exhibit 47, Sheet C, shows Other Income $3.00, overpayment by a speculator. Sheet D, Other Deductions total $6,340.55. This account consists of worthless personal account charged off by the partners Jan. 1, 1926, $4,391.54, freight $17.10, yardage $83.03, feed $1,822.06, total $1,922.19 charged to Net Worth and a forced balance used to put the books in balance of $26.82.

There is nothing on Exhibit 48 to comment on. Same as to Exhibits 49 and 50.

Exhibit 51, Sheet C, Other Income Miscellaneous, total being $6.33, consists of errors and forced balances.

Exhibit 52, Sheet C, deductions from other income $89.47. This item consists of feed $34.64, yardage $14.83, personal account check returned $40.00. Other additions of $61,-155.95 on Sheet D consists of partner's undrawn salaries $10,800, additional investment $3,367.70, capital stock issued $40,000, returns from sale of horse $118.25, returns from sale of memberships $6,870. Other Deductions totaling $66,385.45 consist of withdrawal by partners $58,385.71, local stock $1,000, yard account of $6,075.90, 1924 expenses of $2,905.84, and cost of horse charged to profit and loss $200. The "local stock" is stock charged off.

Ex. 53, Sheet C, shows Other Income Miscellaneous $27.81. On Sheet D, Miscellaneous Deductions $231.42 consists of Exchange assessments of Dec. 1924 paid in 1925 of $8.60, feed of horse prior period $99.22, expense cleared in 1925 as applying to prior period $60, organization expenses charged in 1925 applying to prior period $63.60.

[fol. 364] Ex. 54 requires no comment. Same as to Ex. 55 and Ex. 56.

Ex. 57, Sheet D, shows Other Deductions totaling $9,-442.30 consisting of net withdrawals $9,013.28, errors in collections prior to 1925 $8.73, loss on mix-up in yard $87.10, depreciation 1924 $90.00, bad debts prior $133.99, insurance premiums personal $109.20, life insurance of owner.

Exhibit 58, Sheet C, shows Other Deductions Miscellaneous $279.60 consisting of bad debts $57.00, adjustment yard charges $10.90, adjustment of feed charges $51.74, adjustment of freight charges $8.79, adjustment of insurance and inspection $32.10, and gifts to shippers of $183.27. Sheet D, Other Deductions $259.29 consisting of adjustment of auditing expenses charged to Expense in error.

No comments necessary on Ex. 59.

Ex. 60, sheet D, shows Other Deductions to Net Worth of $682.63 consisting of adjustments of the stockyards company 50¢, assessed accounts prior $523.74, old checks charged back for prior period $98.39, legal expenses charged to expense in 1924 and collected from the party to the suit in 1925 $60.00. Other Deductions totaling $926.30 consisting of two notes charged off $362.00, legal expense

in connection with suit arising from the operations of a trader cleared by the firm $536.10, loss on fixed assets $28.30.

Ex. 61, Sheet C, Other Income Miscellaneous total $7.39. The main item in this is dipping, $7.00. Other Deductions Miscellaneous totaling $826.08, the main item being interest paid $782.04. Other Deductions, Sheet D, totaling $1,880.-11 consists of fine by Omaha Livestock Exchange $1,512.50, life insurance premium of $367.61.

Ex. 62, Sheet C, shows Other Income $265.52. Principal item is profit on cattle buying account $241.04. Other Deductions totaling $419.79, consisting of Christmas soap, etc., to customers $361.44, personal account charged off $25.20, freight account charged off $33.15.

Ex. 63 shows a footnote on the bottom of the balance sheet of Sheet A, "From investigation by the auditor it was found that $20,000 of capital stock was issued and outstanding for which the owners owed $14,000. The capital stock account on the books shows there is $6,000 net." On Sheet B there is a note on the bottom of the balance sheet showing that capital stock issued and outstanding is 150 shares as of Dec. 31, 1925, par value $100 per share, totaling [fol. 365] $15,000, for which stockholders still owe $10,500.

Ex. 64 shows Other Deductions totaling $130.40, which consists of Christmas bazaars and gifts to shippers.

Ex. 65 requires no comments.

Returning to Ex. 7, there is nothing to explain. Ex. 8, Sheet C, showed Other Income Miscellaneous of $43.73. The principal items of which are adjustment freight account $14.25, adjustment feed account $29.30, Other Deductions Miscellaneous total $603.16, consisting of bad debts $25, interest paid $373.07. Witness was questioned in regard to item covering soap purchased and given to shippers. Witness stated that his impression was that was for a prior period.

"Q. If it were not you would regard it as a proper expenditure and would not disallow it as to our business?

"A. I do not believe I would allow soap."

Ex. 9, Other Income on Sheet C, totaling $105.31; consists of compensation liability, insurance paid account employee's accident $90.00; profit on stray animals sold $2.45;

miscellaneous errors made $12.86. Other Deductions totaling $205.84 consist of gloves to shippers $12.00; gifts to shippers $15.10; Christmas knives and cigars to shippers $152.69; and Christmas figs to shippers $25.65.

Ex. 10, Sheet C, shows Other Income totaling $220.89 consisting of interest received $40.00; outlawed checks $18.34; interest on building and loan investment $162.55. Other Deductions totaling $496.58, consisting of notary seal $4.00, celery from Washington market $3.50, interest charges $40.00, livestock insurance premium for partnership insurance $394.65, filing mortgage 25¢, radio parts $12.08, bad debt $8.35, interest paid $30.19, no tag sales $3.56. Other Additions on Sheet D totaling $3,070.68, consisting of profit on sale of livestock exchange membership $2,222.14, interest received applying to the year 1924 $120.00, additional investment by owner $728.54. Other Deductions $14,617.06 consists of supplies written off $479.85, wthdrawal from owners $3,711.76, withdrawal from the partnership of a former partner $10,425.45.

Ex. 11, Sheet C, Miscellaneous Other Deductions $6.50, principal item being personal bad debt $5.00; Sheet D [fol. 366] amounting to $474.86, old notes collected $170.00, expense paid by owner in traveling $249.86, and additional investment by owner of $55.00. Other Deductions on Sheet D totals $9,402.60; consists of checks issued in December, 1925, not charged to the owner's account, $40.00; same explanation for checks for $9.95; withdrawal of partners $9,027.75; old notes paid, $30.00; freight adjustment, $16.67; yardage adjustment, $114.43; feed assessment, $57.26; less gain on insurance and inspection of hogs, $3.46; auto-scrapped account demolished in a prior period, $150.00.

Ex. 12, Sheet C, $348.38, consisting of bad accounts, $331.33; loss on feed, $17.05; Other Deductions on Sheet D totaling $38.52, principal item being loss on typewriter trade, $31.65.

Ex. 13, Sheet C, Miscellaneous Other Deductions, totaled $2,001.65; consists of bonuses paid to two Denver sheep salesmen, $1,301.65; interest expense, $700.

Ex. 14, Sheet C, Miscellaneous Other Deductions, $5,090.77, consisting of interest paid on loans discounted, $4,357.19; taxes on foreclosed land, $578.17; report on loan

application, $41.00; insurance on employee's life, $28.62; bad accounts, $85.05.

Ex. 15, Sheet C, Miscellaneous Other Income, $271.00; consisting principally of interest received, $260.45; Other Deductions Miscellaneous total $796.25; consists of bad debts $121.60; loss on shipment of sheet, $100.00; loss on inspection and insurance $20.68; loss on freight, feed and yardage, $8.75; loss dockage of hogs, $8.28; miscellaneous gifts to shippers, $56.94. Sheet D, Other Deductions total $85.80.

Ex. 16, Sheet C, Other Deductions Miscellaneous totals $92.00; covers Christmas packages of soap to shippers.

Ex. 17, Sheet C, Other Deductions total $1,167.48; consists of Christmas gifts to shippers $49.69; interest paid, $254.49; life insurance $874.30.

Ex. 18, Sheet D, contains Other Deductions totaling $128.51, consisting of horse $65.00, saddle $63.50.

Ex. 19, Sheet C, Other Income Miscellaneous, total $225.81, consists of interest received. Miscellaneous Other Deductions total $2,012.58; consisting of interest paid $333.40; bad checks, $75.00; exchange fine, $105.00; life in- [fol. 367] surance premium on owner, $640.60; stray account 2 calves, $30.00; loss on sheep, $679.22; loss on cattle, $68.24; loss on hay, $77.92; loss on brand inspection, $3.20.

Ex. 20, Sheet C, Other Deductions, $517.30, consisting of insurance premium $295.30; interest, $162.00 on personal note of salesman, and $60.00 cost of a suit of clothes given to a shipper.

Ex. 21, Sheet C, Other Income totals $257.96; consists of interest received on cattle loans. Other Deductions totaling $284.52, consists of interest paid $163.02, Chirstmas gifts to shippers, $21.50. Other Deductions, Sheet D, totaling $614.27, consists of adding machine and typewriter taken out of Expenses and charged to Surplus, $85.00; bad debts prior to the year charged off, $529.27.

Ex. 22, Sheet D, Other Deductions totaling $4,523.84, consists of profit withdrawn $4,227.34; meals for owners $267.50; Federal income tax, $29.00.

Ex. 23, Sheet D, Addition to Capital totals $710.00 and consists of an automobile paid for out of cash and withdrawn by owner.

Ex. 24, Sheet C, Other Income totals $71.00; should properly be in Operating Income. Other Deductions Miscellaneous consisting of $836.04, consisting of personal club dues, $41.45; legal expense account loans, $531.61; investigating account loans, $207.10; claims and adjustments account loans, $55.88.

Nothing on Ex. 25 needing explanation.

Ex. 26, Sheet D, Other Deductions total $174.55; consists of meals to owners charged to Expense and corrected here, charged to Net Worth.

Nothing to explain on Exs. 27 and 28.

Witness desired to make a correction in Ex. 12, on Schedule No. 1. He stated under Owners Salaries Salesmen they had secretary-treasurer and feeder-buyer. The particular owner later informed him that 95% of his time was spent in sorting, selling and yarding cattle, and 5% in buying feeder cattle. He made a correction on Sheet C, Exhibit 24, that Split Commissions should be eliminated and added to Selling Commissions, making the Selling Commissions $103,187.36. This error was discovered when they went over each account sale separately.

[fol. 368] Witness stated there had been prepared under his supervision, statements of the volume of business handled and statements of the commissions received by the livestock commission firms. They appear as part of the financial reports, Exs. 7-65. These statements were prepared under his supervision in the same manner that he had testified to with respect to the financial reports. The preparation of these volume statements was begun at different times after March 3. They were prepared by the same accountants who prepared the financial reports and some additional accountants,—all employes of the Packers and Stockyards Administration and all working under his supervision. He has examined and compared those reports in the same manner as testified to on the financial statements, and the firm numbers correspond with those on the financial reports.

Referring to the volume statement of firm No. 1, the first segregation is selling and the first subheading under that is straight cars. By "straight cars" is meant cars containing only one species of livestock—cattle and calves considered as one. The next subdivision is mixed cars, which

means more than one species; and the next is drive-ins and truck-in sales, which refers to those brought in by motor truck, wagon, or driven in on foot. The next is dealer and speculator sales. The dealers get a different rate than others do,—a different rate than drive-ins,—reason we separate them. And under the heading Buying, Straight Cars has the same meaning as under selling. Drive-outs and truck-outs are just the opposite of drive-ins and truck-ins. "SD" means Single deck and "DD" means double deck.

In statement of commissions of firm No. 1 the heading Straight Cars, Mixed cars, Drive-in and Truck-in Sales, Dealer and Speculator Sales under Selling have the same meaning as witness stated with reference to the volume statement, except that that is commission earned. The same thing is true under the Buying on Commissions Statement.

All of these volume statements cover the year 1925 where the firm operated for that time; two or three did not operate the full year; in those cases the part of the year that the firm operated is covered.

Volume statements tie in with the financial statements and the total selling commissions tie into Sheet C, and the total buying commissions all tie into the title Buying Commissions on Sheet C.

[fol. 369] There are unlocated differences that witness is not able to reconcile and he shows them on the commission statement. The statement on commissions of firm No. 2 ties into the financial report of firm No. 2, that is, the selling commissions on this statement of No. 2 will tie into the total selling commissions on Sheet C. And in order to tie in, unlocated difference of $29.69 was deducted.

These volume statements were taken from the account sales and the account sales register. They were taken from the account sales register when the register had the classification which would meet with witness' segregation that was being used. Otherwise from the account sales.

The total selling commissions were taken from the general ledger. It would be possible but not practicable to locate the unlocated differences. These unlocated differences were immaterial. Witness would say that $400 would be the maximum that would cover all the firms audited.

Where sheep do not appear it would indicate that the firm did not handle sheep. These statements of all the firms are uniform, so that the explanations just made would cover all other firms.

Witness stated that as an expert accountant he could take Exs. 7-65, with the volume and commission statements, and calculate the cost to each firm of selling a carload of each species of livestock, as well as the cost of selling mixed cars and the per-head cost of selling drive-in stock. He would segregate the gross commissions earned into the different operations, commissions earned from straight cars of cattle and calves as one, straight cars of hogs, straight cars of sheep, mixed cars, drive-ins as to cattle, drive-ins as to calves, hogs, sheep, dealer or yard sales, split commissions, etc., and then he would take direct expenses, salaries that could be applied directly,—that is, if a man is a cattle salesman he would take income earned from selling cattle, and calves on straight cars, on mixed cars, drive-in and yard sales, and distribute his salary according to each section of that income, prorated according to the per cent that each part of the income would bear to the total income from cattle and calves in that instance. Same as to hogs and sheep. The overhead would have to be distributed on some arbitrary basis, that is, on what each section of the gross income would bear to the total gross income. This method is customary in accounting practice. It can not be done exact and it must be done on the soundest [fol. 370] and most sensible method that can be arrived at. It would not be practicable to observe the activities of all the firms, and even if that was done it would not be exact.

Ex. 86 is an audit of the various firms and shows each firm, showing what the owners did when they didn't draw a salary. Where the word "branch" appears it means that there was no owner at the Omaha market.

Cross-examination:

Firm No. 59 is Joe Flynn; No. 61 is Wagner & Dolezal; No. 62 is independent. Government's objection to question whether witness had audited firms 59 and 62 or the Farmers Union sustained on the ground that these firms were not named as respondents.

Asked to take Exhibit 29 and tell the cost of handling a carload of cattle and the salesman's expenses which forms a part thereof, witness said it would take the balance of the afternoon to do that. He would get the cars from the volume statement, number of cars of cattle sold from the volume statement, and drive-in and yard sales, etc., and distribute the cattle salesman's salary. Would accept the non-owner's salary shown by the books. He would show the cattle salesman's salary distributed over the income from cattle and calves sold and at the end of his cost statement he would state that there was no salary of this firm shown, where there was an owner. The witness said where the owners did not pay themselves any salary, that he could not assign a salary to them. He would have to leave out owners' salaries if they did not draw any and did not show any. He would have to show the figures just as they are; that when they did not draw any salaries he would state that at the bottom of the cost sheet. In regard to cattle and calves it was not possible to segregate them in some cases, and in some it was. He did not believe it would be practical to stop and analyze each account sale as to whether it was cattle and calves; he would have to stop maybe five minutes or longer to figure out how many cattle and how many calves, etc., and he didn't believe that such would be practical arrangement, because the bulk of the income in the first place is from straight cars to the market and that is all segregated, and the other income is comparatively speaking of minor importance. Witness gave order not to segregate cattle and calves.

"Q. All right, then, explain to me why you arrived at that conclusion that the calf rate being a matter of investigation, according to the ruling of the examiner, you did not find out what the calf revenue was.

[fol. 371] "A. We have where we could get it.

"Q. How many carloads of calves and straight carloads did this firm No. 16 have?

"A. I didn't separate them.

"Q. Do you know?

"A. No, there is no way of telling.

"Q. You don't know whether the majority of income in the case of this firm or any other firm so far as this exhibit is concerned, was derived from the sale of cattle in straight cars or the sale of calves in straight cars?

"A. We considered them as one and there is no way to tell from this exhibit; nor can we tell who the salesman was.

"Q. That applies to the balance of the exhibits, I take it?

"A. No, it does not.

"Mr. Boyd: Take the sheet of Exhibit 22a, sheet No. 7, and tell me the number of owners in the case of the first car appearing under Mixed Cars.

"A. I haven't that information on any of the firms. And cannot tell the number of drafts, nor cannot in case of any other firm. Cannot tell the amount of sorting and handling necessary in the yards."

The audit was made from an entirely neutral viewpoint. Witness personally didn't see any reason for having any number of drafts or number of owners in this volume statement.

Witness couldn't allocate the cost of selling calves from a statement because cattle and calves were grouped. He could segregate hogs when hogs and calves came in the same car; the working papers have that. It would not be possible to figure out the cost on calves separately, nor cattle separately. Witness would allocate advertising with the rest of overhead or advertising expense. Witness would spread on the same basis of advertising, travel and entertainment, on the per dollar basis as to gross income. He [fol. 372] believes the dollar basis of gross income would be nearer correct than the car basis. It would be necessary to figure the percentage of revenue of commissions earned from each operation—each species—to distribute any indirect expense on that basis, if we could not distribute them or allocate them directly. In the case of an employe-salesman the soundest basis, I think, is to distribute his salary on the basis of the income according to the species he handles.

Witness stated that he cannot fix an owner's salary; and that if the owner does not give the salary he could only give the cost statement without in any way fixing owner's salary. Witness can tell the cost of cattle and calves in a straight car, the cost of hogs, by distributing the expenses in connection with firm No. 16 on the basis of gross income which each operation bears to the total.

Witness was asked how he would allocate the substantial loss of firm 23's operations.

"A. Well, I would not allocate the loss. I would allocate the expenses which would result in a loss to show possibly that this firm happened to show on some species, some operations, they lost money."

Witness can not figure close enough to say whether a raise in rates of 30 or 40¢ in the case of hogs and $1.50 in the case of cattle would be reasonable. Says he would not attempt to make any calculations on the basis of rates.

Witness was asked if he could determine the cost of selling a carload of hogs accurately or wihtin $1.00 a car, so that there might not be a variance of $1.00 a car. Answered affirmatively. The different firms are bound to have different costs—that they all have different expenses.

Witness prepared a statement covering firm No. 40, which carried into effect the views expressed by him, that he could calculate the cost of selling livestock from the data available in the exhibit. In this statement the amount of salary of the cattle salesman who was an owner, which had been charged to straight cars was $3,964.80. The balance of salary was charged to mixed cars, cattle and calves, drive-in cattle, dealer and speculator sales cattle, straight cars of cattle, drive-out cattle, drive-out calves, and split commissions received. He charged a portion of that to handling cattle which arrived in mixed cars amounting to [fol. 373] $342.24. He arrived at this figure by taking the number of head of each species, considering cattle and calves as one, as shown in the mixed cars, and multiplying the number of head by the drive-in rate to see approximately how the three would come out according to the total commission received on mixed cars. It came out within $92.91 of the total commission received on mixed cars, which was $3,305.24. He then found out the percent of each commission and figured that way to the total commission. For instance, cattle and calves was 31.66%, and hogs 61.57%, sheep 6.77%, and reduced the commission that he found by multiplying by the drive-in weight, reduced the commission on each species by its particular percent to the total, reduced the commission by the percent, applying it against $92.91, which brought out the figures to the total shown on the schedule. This would not show the time

and effort in the sale of hogs in cars of cattle as compared with cattle and calves arriving in straight cars. He does not know whether the salesman actually sold calves, but spread his salary over cattle and calves. Witness does not know whether the yardman sold truck-in hogs but if he did the description of the duty assigned him was not given to the auditor correctly because it was stated that he was a general yardman. Witness understands that the income from the sale of steers might be decidedly different from the income from the sale of butcher stuff in the application of the tariff. She-stuff is loaded in larger numbers per car than fat steers. The more segregation you make, the finer your costs would be, but somewhere you have to have a line of demarcation and stop because if you don't the expense of keeping the cost up will be more than any value received from the data after you have gotten it.

This statement shows a net loss per car on straight cattle and calves of 70.13 cents. Cattle arriving in mixed cars show a net loss of 56.89 cents. Witness has made no segregation between the time of cattle salesmen spent in selling mixed cars and straight cars. Witness takes the number of cars or the amount of money received and reduces the percentage and has allowed exactly the same amount of time in the division of salaries according to income. Salary of Salesman No. 1 and Salesman No. 4 might just as well be added together as they are both spread on the same basis only in different amounts. Witness does not assume to make any division between steers and butcher stuff. If it be assumed that the steer salesman sells five times as many steers as the butcher salesman, it would show a les- [fol. 374] sened steer cost per head and a greater cost for selling butcher stuff because the income would be five times greater. Witness has no way of telling whether the steer salesman was busy all the time or whether the cow salesman was busy all the time. He made no segregation between steer and butcher stuff and in the division of traveling expenses included that as a part of the cost.

"Q. So you take the figure of general expenses, lump it, and take the proportion which you arbitrarily charged cattle and calves?

"A. You might put it that way.

"Q. Is that what you did?

"A. Well, yes, I was just stopping on the work 'arbitrarily' but it is the soundest basis that I know of to distribute the overhead. Any overhead in the biggest factory in the world I am sure would have to be distributed on some arbitrary basis but on the soundest basis that the accountant could arrive at."

In this case they showed yardman's salary as General so we distributed his salary on the basis of income from each species compared to the total income. We had to so distribute it because that appeared to be a sounder basis than to guess at what species he worked on.

Asked if firm No. 40 did not need the increase to make their cattle operations profitable or at least reduce the amount of loss:

"A. Yes, as you said before, provided the income and expenses are on the same ratio in 1926 and 1925, I would answer in the affirmative."

Witness said if he could not get the office man's salary exact as to the time he devoted to each species during the day, every day, which is obviously impossible, he would spread it on the same basis. Were he a commission man he would prefer to have a statement of this kind drawn up to show what his operations were than any other kind of a statement. The sheep business in firm No. 40 showed a profit. The hog business showed a profit, and the cattle business a loss.

It would take more stationery for plural ownerships.

[fol. 375] Witness has no information in respect to the salaries shown in the schedule of firm No. 40 as applying to owners, as to whether reasonable or unreasonable.

Witness said that so far as the time devoted, the talent or experience employed, or the skill of the individual doing service for the firm, is concerned, he has not attempted to make any estimate whatever.

"Q. Based on your experience as a public accountant, do you believe that it is an actual fact that it is possible for one of your knowledge, or any other person, to accurately stipulate the worth of any individual devoting his time to the service of his patrons in the case of firm No. 40?

"A. I cannot speak for any other person, but speaking my own opinion I have no way of determining what the owner would be worth to the firm."

Salaries of employes devoted to the same general class of work, vary. An owner-salesman drew $10,000 a year; witness might conclude that he still expected to have some profit at the end of the year. Witness doesn't know how the firms figure what they are worth to the shipper.

"Q. Have you any information or are you able to say that any item of expense appearing under Expenses on Sheet C of the various exhibits were warranted and necessary expenses, or unwarranted or unnecessary expenses in whole or in part.

"A. I have no information of that kind; I have just taken the expenses as the books show them. Witness did not attempt to use any discretion as to whether expenses were warranted or not."

Witness was asked about soap.

"A. Well, whether that be warranted or not, other than we classified expenses we did not think pertinent to the commission business, we didn't think pertinent to the operation of the commission firm strictly, but the balance of ex- [fol. 376] penses we didn't use any discretion—didn't try to use any discretion as to whether or not they were warranted. If firms bought pencils and note books they have been allowed as expenses."

Witness thinks that "there are expenses included in a great many firms that personally he doesn't think are necessary, but we left them."

The net operating profit of the firms is $293,382.39. That figure does not include the salaries of owners, who drew no salaries. The total amount of the value of livestock sold by firm No. 40 in 1924 was $4,496,161.86 and the total operating profit of firm No. 40 was $2,541.29.

As far as witness knows, Mr. Tomlinson got no information from anyone working under his supervision.

Witness checked some figures with the stockyards company to see whether or not they would agree and was satisfied the result was fairly accurate.

"Q. Now, why do you consider that a sum of money paid by respondent to cover the liability of the respondent for freight of a carrier, and which that respondent has to pay by reason of his legal responsibility, to be anything other than operating expenses?

"A. Because in the usual course of business it should be deducted from the account sale and charged to the shipper."

Witness believes respondent can rebill the shipper and explain the circumstances to him in a letter and ask him for a check for the undercharge. Witness didn't think undercharge was a legitimate operating expense. Does not see why an undercharge should not be deducted from the next shipment made by the shipper. The reason for disallowing undercharges was that in the great majority of cases the firms could have collected it and didn't. This is the custom among accountants of the Packers and Stockyards Administration and he instructed his auditors not to allow undercharge items as items of expense. Witness does not believe that these underchanges would amount to $400 or $500 at the outside for the 29 firms.

Witness was asked about $250 legal expenses, which was [fol. 377] not allowed, and answered that this was because the particular firm referred to did not incur this expense in connection with the operation of the commission business. Witness would allow legal expense in connection with the commission business and the cases have to be decided on their individual merits. The amount of money expended would make no difference if it was a legitimate operating expense to the business.

Witness did not consider that a bad debt was a part of the commission business and chargeable to operation. "When I stated that bad debts were not allowed by us in the general sense of a bad debt, I believed that there are specific instances when they should be allowed, and were allowed and will be in any future audits that I make, because they are unavoidable."

Witness was asked in case of firm No. 3 in regard to the net worth of some $9,000 at the close of 1925, which the firm

owed the main office, and asked how he accounted for saying that they had a net worth.

"A. We use 'net worth' in the same sense as capital; that is their capital that they are operating under.

"A. How can a firm have a net worth when they actually have no assets?

"A. This firm No. 23 has assets. They have assets on the books. The balance sheets show that they have assets. The net worth of any corporation is the capital employed in the business. In other words, assets less the liabilities. The gross worth would be the economic capital or the total assets."

If the firm went to the bank and borrowed $9,000 witness would call it a current liability if it would be due within a year; if due in ten years, would call it a deferred liability.

Witness allowed what depreciation the firm wrote off on office furniture and fixtures but did not allow depreciation for 1924, which was written off in 1925.

The books of the firms at this market are kept about as well as they are at other markets, but that is not saying a great deal for any of them. Many firms keep their books on a slipshod method and others make some very good statements up.

[fol. 378] Mr. Boyd told witness that the inquiry alleged substantially that the Secretary had reason to believe that the advances in the tariff were unreasonable and asked if witness had sent any information to Washington prior to filing the complaint from which such a statement could be based.

"A. I have not." Doesn't know what information was available to the Secretary. Witness doesn't know anything about the present tariff.

Redirect examination:

In Exhibit 29, firm No. 23, in regard to net worth referred to as $9,000, the correct figure was $11,303.84, and the figure for Dec. 31, 1925 was $4,631.67.

Witness was asked concerning necessary operating expenses.

"A. I meant that necessary operating expenses, or operating expenses that we have classified under that heading, were considered as pertaining to the conduct and operation of a commission business. If a man goes out and invests in stocks and bonds and sustains a loss, that is not necessary to the conduct of the commission business, and there are items—not of just that character but on that order—that do not have to be involved in order to conduct a commission business."

In regard to the $2,500 for cost of litigation witness said:

"The firm lost the civil suit and had to pay the legal expenses and other expenses in connection with the suit. It appears that this litigation was in connection with some cattle out at Hamburg, Iowa, and the owner wanted to get them to Omaha and sell them. The owner said that they were dying like flies. The firm succeeded in getting some cars out to the point and bringing the cattle in, and sold them to a trader. The cattle changed hands twice, when one of the cattle died and the firm was sued."

Witness still does not think this should be considered an operating expense.

Charity and donations are not strictly a commission firm's operating expenses but it has been allowed because [fol. 379] it is the custom among accountants to do that.

Referring to firm No. 40 showing the cost calculations, witness gave the per car profit on the various species as follows: Straight cars, cattle and calves, net operating profit including owner's salaries $5.76 and a fraction; on hogs, $7.64 and a fraction; on sheep $9.44 and a fraction; mixed cars, cattle and calves, $4.53 and a fraction; hogs, $10.41 and a fraction; sheep, $10.90; on drive-ins per head cattle 22¢ and a fraction, calves 12¢ and a fraction, hogs 14¢ and a fraction, sheep 8¢ and a fraction; yard sales, dealers-speculators, per head, cattle and calves 11¢ and a fraction; hogs 4¢ and a fraction; sheep 2¢ and a fraction. Straight cars buying cattle and calves $4.66 and a fraction; hogs, $9.40 and a fraction; sheep, $9.57 and a fraction; drive-outs and truck-outs per head, cattle 26¢, calves 4¢, sheep 9¢ and a fraction.

Witness stated if the the three owners' salaries of $4,800 each were included there would have been less on some species and that if the owners had made their salaries three times what they did make them there would have been a loss on all species. The incomes derived from the different species in mixed cars in the cost sheet of firm No. 40 were arrived at arbitrarily, in that they were not exact but an approximation. Witness does not believe it possible to make them exact. He was referring to the cost sheet of firm No. 40 for mixed car revenues.

It is not possible to take into consideration the varying skill and quality of skill of the employes. Witness would gauge such skill by the salaries received. Witness separated the salesmen's salaries in cost per car and per head of buying livestock by firm No. 40, just as he did the selling cost, according to the species sold. He made no segregation of plural ownership cars in his cost statement of firm No. 40. He shows a gross income from selling of straight cars of cattle and calves as to firm No. 40. It amounts to $11,787.86. Mixed cars of cattle and calves, $10,167.87; mixed cars of hogs, $1,977.84; mixed cars of sheep, $217.51. Witness proportioned some of the cattle salesmen's salaries for straight cars of cattle and calves, and cattle and calves in mixed cars, and he did this on the basis of income received rather than the amount of labor necessary on each particular car, and this was on the income received from the total number of cars. Firm No. 40 handled about nine times more straight cars of cattle and calves than mixed cars. [fol. 380] Witness in allocating salaries of yardmen was unable to ascertain from the books of No. 40 whether these yardmen devoted more time to one species than another and he could not from the books determine the relative amount of the time devoted by cattle salesmen to selling cattle that came in straight cars and cattle that came in mixed cars. He charged against cattle sold by firm No. 40 all the direct cost of selling cattle, and the same as to other species. By "cattle" he means cattle and calves. In view of the fact that the schedule of rates and charges known as Tariff No. 2 makes no distinction in rates for selling or buying the various grades of cattle, witness knows of no reason as a cost accountant why he should apportion expenses of selling cattle among those various grades.

It would not aid the witness to know the names of the salesmen in this work, nor the amount of sorting done by them.

Mr. Boyd asked witness if he understood that the increase requested by the respondent applies practically to cattle only, so far as the increase is concerned.

"A. I have heard that"—and believes it to be true.

Witness was asked to refer to that particular species on firm No. 40 and tell him the profit per car in the case of cattle.

"A. It is a loss. We can not segregate cattle and calves for the reason that the receipts of 1925 at this market were 93% cattle and 7% calves, taking the cattle and calves as a whole."

Offers in Evidence

Government offered in evidence Exhibit 87, being a tabulation prepared by the accountants from the account sales records of firms Nos. 13 and 18 covering the months of August, September, October and November, the year 1925. The purpose of this tabulation is to show the number of cars of branded cattle sold by each of the firms mentioned during that period; the number of cattle in those cars; the number of owners involved; the number of drafts; the number sold to traders; the number of head sold to order buyers, which also includes the number of head sold directly to purchasers from the country, etc., and the number of head sold the packers. These firms are being taken as fairly representative of the general handling of branded cattle in these respects at Omaha.

[fol. 381] No objection to this exhibit except as to its probative value in arriving at a reasonable rate. Exhibit received.

Government offered Exhibit 88, a copy of the record of the U. S. Department of Agriculture, which is a manuscript of a public document now in the process of printing. It is a study of the cost and method of fattening beef cattle in the corn belt during the five-year period of 1919 to 1923. This study covers the territory immediately tributary to Omaha, it being offered for the purpose of showing the cost of production to shippers of livestock to Omaha and not

for the purpose of showing the methods of fattening cattle. Objected to for the reason that the cost of production in the territories indicated should have no bearing upon the rate of commissions charged by the respondent. Objection overruled and Exhibit 88 received.

Government offered Exhibit 89, a copy of a record of the Department of Agriculture, a public document, same being an economic study of the cost and method of range cattle production on 41 ranches in Colorado in 1922, showing 22,285 cows and their calves. This was introduced for the purpose of showing the cost of production of range cattle in the territory tributary to Omaha. Objected to on the ground that the data covers the year 1922 and the situation has changed since that time; and the further reason that it has no probative value. Objection overruled and exhibit 89 received.

Government offered Exhibit 90, copy of a record of the Department of Agriculture, an official document, it being an economic study of the cost and method of range cattle production in North Central Texas for 15 ranches in 1920, 1921 and 1922 and 40 ranches in 1923. This was offered for the same purpose as Exhibits Nos. 88 and 89. Objected to for the same reasons. Objection overruled and exhibit 90 received.

Government offered in evidence Exhibit 91, record of the Department of Agriculture, a public document. Exhibit introduced as containing the basic statistics of the livestock industry of the United States up to and including the year 1924.

Government also offered Exhibits 91a to 91r inclusive, same being monthly supplements of crops and markets, published by the Department of Agriculture for the months of January, 1925, to February, 1926, inclusive, and weekly issues of said crops and markets published by Department [fol. 382] of Agriculture for the weeks ending February 6, 13 and 27, 1926. Only so much of these exhibits as contains statistics pertaining to the livestock industry offered in evidence.

Same objections; overruled and Government Exhibits 91a to 91r, inclusive, received.

Government offered Exhibit 92, copy of a record of the Department of Agriculture, a public document, same being

a preliminary report on the cost and methods of carrying cattle on National Forest ranges in Colorado, Wyoming, Montana, Oregon, Washington, South Dakota, published in 1925 covering the year 1925. Offered for the purpose of showing production of livestock coming from territory tributary to Omaha.

Same objections; overruled and Exhibit 92 received.

Government offered Exhibit 93, copy of a record of the Department of Agriculture, publication, same being a preliminary report of the cost of marketing livestock in the corn belt for the year 1921, for the purpose of showing cost of livestock marketed at Omaha.

Same objection; overruled and Exhibit 93 received.

Government offered Exhibits 94 and 95 respectively, copies of records of the Department of Agriculture, public documents, No. 94 being the preliminary report of the cost of marketing cattle in the corn belt in 1921, and Exhibit 95 being a preliminary report on the cost of marketing sheep in the corn belt in 1921.

Same objection; overruled and Exhibits 94 and 95 received.

Government offered Exhibit 96, copy of a record of the Department of Agriculture, a public document, same being a study of the cost of production or range sheep in the San Luis Valley, Colorado.

Same objections; overruled and Exhibit 96 received.

Government stated it would rest, with the exception of offering Exhibits 97 and 98, which were not quite ready. It was agreed that these two exhibits may be inserted in the record.

Government offered Exhibit 97, account sales data of sundry firms for 6 weeks in 1926; and Exhibit 98, statement of receipts of sundry firms, 1921-25. Received.

[fol. 383] Respondents (plaintiffs) offered in evidence Exhibit A, arbitration award of 1923, and Respondents' Exhibit 1, notice of hearing issued by the Secretary to Woods Brothers Commission Company. Received.

[fol. 384] Exhibits Received in Evidence by Secretary of Agriculture

EXHIBIT 1

Schedules of rates and charges of plaintiffs as filed with the Secretary of Agriculture. Consists of (1) schedule effective January 1, 1922, and not material herein, together with Rule 14 of the Omaha Live Stock Exchange which also constitutes part of Exhibit 5 hereinafter summarized, and (2) schedule filed pursuant to arbitrator's award effective September 1, 1923, and identical with "Tariff No. 1" attached to the petition as an exhibit thereto and reproduced in the transcript thereof.

EXHIBIT 2

Schedule of rates and charges promulgated by respondents, effective January 26, 1926. Identical with "Schedule No. 2" or "Tariff No. 2" filed as an exhibit to the petition and reproduced in the transcript thereof.

EXHIBIT 3

Sample Statement of Weight and Charges on Live Stock Received by Union Stock Yards Company, Omaha

Statement of Weight and Charges on Live Stock Received at Union Stock Yards Station, South Omaha, Nebr., 3/23/6

(Delivering Line:) Un. Pac.
(Consignor:) J. J. Jones.
(Consignee:) Blank & Co.
(Point of Origin:) Norfolk, Nebr.

U. S. Yards count				Sales count			
Cattle	Calves	Hogs	Sheep	Cattle	Calves	Hogs	Sheep
.....	.....	65	.....	.....	.....	65	.....

Car number		Weight	Rate	Charges
40426	Actual	17,830	...	.....
	Less fill	300	...	.....
		17,500		
	Minimum	16,500	24	39.60
	Excess	1,000	...	2.40
	Switching	.....	...	.50

Weight and Description Verified. Western Weighing and Inspection Bureau. M., Auditor.

Received Office of Secretary and Treasurer Mar. 24, 1926. Union Stock Yards Co. of Omaha (Limited), Omaha, Nebraska.

[fol. 385] EXHIBIT 4 (a-b-c-d-e-f)

Annual live stock reports Union Stock Yards Company, Omaha, 1920-25, inclusive; material portions are as follows:

Exhibit 4b, 1920

Driven Into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	3,656	946	18,588	8,022	127
February	2,355	533	10,409	7,775	206
March	2,590	689	20,078	7,753	213
April	2,878	670	12,457	6,081	169
May	1,906	865	22,206	5,890	243
June	1,010	659	23,101	8,038	51
July	1,220	607	18,054	2,378	39
August	1,008	441	14,642	1,418	56
September	977	546	10,298	1,950	76
October	1,234	634	9,174	2,338	19
November	1,120	436	8,917	5,857	....
December	2,289	549	13,622	13,869	23
Total year 1920..	23,143	7,575	181,546	71,369	1,222
Total 1919.....	29,941	5,338	179,036	46,830	786

City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	101,060	2,258	272,533	136,398	....
February	65,068	3,090	150,627	120,440	....
March	88,616	2,709	231,547	134,696	....
April	74,338	2,102	201,266	114,471	....
May	66,928	1,987	241,960	75,885	....
June	61,036	4,690	205,437	84,430	....
July	49,391	3,852	149,150	128,060	....
August	50,762	5,994	108,483	161,293	....
September	90,580	5,906	75,349	191,492	....
October	76,450	2,412	72,429	81,441	....
November	92,416	4,339	121,705	90,307	....
December	54,093	2,129	159,029	104,443	....
Total year.....	879,758	41,477	1,998,505	1,423,356	....
Total 1919.....	1,109,435	49,155	2,530,833	1,661,179	....

[fol. 386] Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	160,342	6,806	349,464	198,670	2,522	12,297
February	103,592	5,507	221,200	178,810	2,292	7,982
March	132,531	5,624	341,404	175,867	2,472	10,725
April	131,165	5,174	304,466	144,473	1,773	10,184
May	105,210	3,826	304,815	103,002	764	8,806
June	90,581	5,944	281,549	131,752	1,052	8,097
July	72,743	5,803	221,009	274,863	1,253	7,202
August	109,242	9,046	156,966	483,272	2,712	8,497
September	183,720	10,639	108,608	517,883	2,159	10,824
October	181,225	10,296	92,961	328,298	1,116	9,713
November	156,613	6,261	136,440	211,664	399	8,953
December	97,157	3,752	189,450	142,194	237	7,271
Total year	1,524,121	78,678	2,708,482	2,890,748	18,751	110,497
Total 1919	1,874,996	100,240	3,179,116	3,789,188	25,201	132,798

Exhibit 4a, 1921

Driven into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	1,738	398	13,738	13,863	3
February	2,111	532	17,585	11,550	55
March	2,126	812	18,513	8,522	144
April	1,661	477	17,021	4,356	198
May	2,056	411	18,342	14,007	145
June	1,790	482	23,676	5,700	54
July	1,548	516	20,860	6,644	54
August	1,422	554	16,608	4,096	78
September	1,041	691	14,310	4,747	89
October	1,213	671	14,091	11,124	39
November	2,273	791	20,374	21,401	42
December	1,765	495	21,776	25,898	31
Total year 1921	20,744	6,830	216,894	131,908	932
Total 1920	23,143	7,575	181,546	71,369	1,222

[fol. 387] City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	89,716	2,596	230,061	151,154	....
February	58,030	1,934	243,687	134,332	....
March	80,685	2,191	197,943	164,458	....
April	68,273	1,343	183,210	150,021	....
May	72,373	1,593	185,942	121,226	....
June	82,110	3,134	232,381	133,142	....
July	54,222	4,614	177,221	150,455	....
August	72,252	4,590	122,394	218,200	....
September	57,101	3,795	99,098	168,393	....
October	70,667	4,820	95,050	151,896	....
November	54,897	3,442	117,903	122,550	....
December	34,656	1,049	88,431	72,207	....
Total year	794,982	35,101	1,973,411	1,738,034	....
Total 1920	879,758	41,477	1,908,505	1,423,356	....

Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	131,790	4,499	289,341	188,115	364	10,371
February	93,395	4,407	326,486	184,639	670	9,243
March	124,192	5,737	280,186	214,816	1,154	9,963
April	103,312	4,114	241,169	209,163	687	8,643
May	100,588	3,756	238,444	139,273	334	8,000
June	117,384	4,860	286,548	168,186	441	9,558
July	78,338	5,805	245,341	207,288	330	7,581
August	137,715	12,413	161,897	413,724	748	9,475
September	131,977	12,587	127,659	399,745	864	8,619
October	149,490	19,216	125,787	313,313	475	8,985
November	103,100	11,815	151,258	156,463	531	6,800
December	69,211	4,875	191,160	158,237	181	5,822
Total year	1,340,492	94,084	2,665,276	2,752,962	6,779	103,060
Total 1920	1,524,121	78,678	2,708,482	2,890,748	18,751	110,497

[fol. 388] Exhibit 4c, 1922

A Statement by Mr. E. Buckingham, Vice-President and General Manager of the Company, Before the Secretary of Agriculture, Packers and Stock Yards Administration at a Hearing in South Omaha, Nebraska, September 18-20, 1922, with figures revised to December 31, 1922

I desire to make a statement about Public Stock Yards and particularly the South Omaha Yards to the end that those interested in this hearing may more fully understand the situation.

The actual workings of a large stock yards, where a live stock market is maintained, is probably less understood than almost any other public utility. Many people believe that the Stock Yards company employ the Commission Men, and that it buys live stock for the packers, and that it has, in a general way, control over the prices paid for live stock—such is not the case. The Stock Yards company simply provides the facilities and service for the accommodation of live stock from the time the railroads deliver the shipments at the market until they pass into the possession of the buyer—be he shipper, feeder-buyer or packer; in other words, it is simply the bridge over which live stock passes in going from the Railroad to the final buyer, where it is the local packers who buy for slaughter, or others who buy to take the stock back to the country for feeding purposes, or to ship to other markets or killing plants.

Live stock brought into the market by the Railroads, is in some cases, set to the unloading chutes by the Railroads themselves, but at some of the larger markets where the switching facilities are separate or owned by the Stock Yards company, the cars are set on the Transfer Tracks by the Railroads, and after inspection, as required under the Interstate Commerce Commission Safety Appliance Act, they are switched to the unloading chutes for unloading. The work of unloading is performed by the Stock Yards company, who is paid for such service by the Railroads. [fol. 389] After the stock is set to the unloading chutes and before it can be unloaded, it is necessary for the Federal Bureau of Animal Industry employees to check over all waybills before the Stock Yards company can unload the stock. After unloading the stock, it is necessary to leave it in the unloading chutes until the Federal Bureau of Animal Industry employees have personally inspected each load for scabbies or other diseases, after which inspection the stock is delivered to the owner or his representative, and then the transportation ceases, unless it is a shipment simply unloading for rest, feed and water, in which case, after the length of time required by law, it is unloaded and delivered to the Railroad that is to handle it on to destination; the Railroad company paying for the switching in and out, and also for the unloading and loading. The feed is paid for by the owner either at the time of feeding or by being added to the billing as "back charges."

When the stock is for sale it goes to the pens assigned for sale purposes. The amount of feed ordered by the owner or his representative, the commission men, is fed the stock by the Stock Yards Company, and the commission men or their employees water the stock when, in their judgment, it is proper to do so. Each pen is provided with a water trough and water connection as well as sewer connection so that all that is necessary to do on the part of the commission men is to put the plug in the trough and turn on the water. The commission men sort the stock, sometimes using several pens for one carload classifying it as may best suit the market requirements and to enable them to get the best prices. After the stock is sold the commission men drive it to the scales of the Stock Yards Company, where it is carefully weighed by the Stock Yards Company's weighmaster, and usually, a representative of the buyer and

seller are present when the scales are balanced, to see that the proper weight is arrived at, but in every case a representative of the seller is present as it is imperative that he furnish the weighmaster at the time the weight is made, the name of the seller and the purchaser, so that such information may be placed on the weight ticket at the time.

After weighing, the Yard company employees yard the stock and lock it up and finally deliver it to the purchaser [fol. 390] upon demand, or in the case or stock to be shipped out, drive it to the chutes for loading. Stock purchased by yard traders is delivered to them on demand, after weighing, and they or their employees drive it to that part of the yards assigned to them for holding stock for sale.

As a rule receipts of live stock are largest on Mondays and Tuesdays, lighter on Wednesdays and Thursdays and quite light Fridays and Saturdays, so that the business of Monday and Tuesday regulate the capacity of stock yards as to pens, scales, water and feed supply as well as labor. If receipts were evenly distributed they could be handled at less expense—where receipts are six, or eight hundred and sometimes as high as one thousand cars in one day it takes plenty of pen room as well as labor to properly take care of them without mix or loss, particularly when frequently the one load is sorted for sale purposes into several different lots, each requiring a pen both for sale and again after sale and weighing for holding until delivery to purchaser. It is important that each day's receipts be disposed of the date of arrival because the facilities will be needed for fresh receipts the day following.

The Stock Yards Company sells to the traders and packers, who purchase more than one-half of the hay sold and considerable corn, all necessary feed at the same prices charged all other parties. Frequently stock sold to traders is re-sold and shipped out the same day it is purchased by them, but in a great many instances the stock is held a number of days before finally disposed of.

The Stock Yards Company's revenue comes from:

First. Switching charges it collects from the Railroads where it owns the switching facilities, and performs the work of switching cars of stock to and from the unloading chutes. Also the railroads pay Stock Yards Company for unloading and loading stock.

Second. Its yardage charges which are a stipulated amount per head on cattle, hogs, or sheep, also on horses and mules, this to cover the market privileges, use of pens, and service of weighing.

[fol. 391] Third. Its earnings on the sale of feed.

The above comprises the duties of a Stock Yards Company. They are in no way responsible for the prices of live stock nor do they in any way influence the prices.

* * * * * * *

The statement of receipts of live stock for the year ending December 31st, 1922, below, (which incidentally shows the wide scope of country served by the Omaha Yards), also statement of disposition of stock, shows the extent of the buying for the Packers at Omaha—both large and small—and that considerable live stock is purchased at Omaha for shipment to other packing points. The latter statement will also show a large amount of partly-fat and feeder cattle purchased at Omaha for feeding purposes. A great many of the partly-fat cattle are purchased in direct competition with the packers to be taken to the country for finishing purposes, before coming to the market again.

Receipts for the Year 1922

Origin	Cattle	Hogs	Sheep
Arizona	205	.....	877
Colorado	93,478	2,572	136,424
California	518	.....	107,651
Illinois	115	.....	545
Iowa	216,021	236,430	75,036
Idaho	1,431	.....	635,737
Kansas	76,991	626	20,489
Minnesota	12,320	345	112
Montana	17,076	124	40,196
Missouri	8,350	1,132	1,038
Nebraska	1,022,292	2,341,904	897,171
New Mexico	10,246	141	250
Nevada	229	.....	43,759
North Dakota	273	613	1,027
Oklahoma	26,035	.....	202
Oregon	516	.....	119,657

Origin	Cattle	Hogs	Sheep
So. Dakota	72,032	221,745	76,254
Texas	23,268	544	1,000
Tennessee	151	.....	.....
Utah	947	.....	63,881
Wyoming	161,233	3,316	310,365
Washington	.....	.....	1,116
Wisconsin	77	.....	.....
Canada	447	.....	.....
Total	1,744,251	2,839,382	2,532,787

[fol. 392] Disposition of Stock, Year 1922

Origin	Cattle	Hogs	Sheep
Sold to Packers	960,659	2,222,260	1,515,221
Forwarded First Hand Offered but not sold	6,014	7,260	33,633
Forwarded Not Sold Simply Fed in Transit	21,822	37,654	14,069
Sold to Foreign Packers, Order Buyers and Traders	755,756	572,208	969,864
Total	1,744,251	2,839,382	2,532,787

In addition to Armour & Company, The Cudahy Packing Company, Dold and Co., Morris and Company, and Swift & Company, there are located at Omaha eleven smaller packing companies, namely, Ohama Packing Co., South Omaha Packing Co., Hoffman Bros., Mid-west Packing Co., Roth Packing Co., Mayerowich & Vail, Pat O'Dea, Higgins Packing Co., M. Glassburg, J. Rife, Joe Hoffman, all buying more or less live stock on the market, in competition with the larger packers, and the fact that all of them have been in operation for a number of years, is the best evidence that they are not being interfered with by the Stock Yards Company. In addition, the Lincoln Packing Company, of Lincoln, Nebraska, Sinclair & Co., of Cedar Rapids, Ia., Morrell & Co., of Ottumwa, Ia., and Wilson & Co., of Chicago and Kansas City, and Ogden Packing Co. of Ogden, Utah, maintain buyers at Omaha, and purchase in considerable numbers from time to time.

In this connection, J. W. Murphy and Schwartz & Son purchased 529,806 head of hogs at South Omaha in 1922, in competition with the packers, largely for shipment to packing companies at other points.

* * * * * * *

[fol. 393] It must be understood that live stock and most of the packing house products are perishable, and practically all of the switching therefore at a stock yard terminal must be expedited, and of necessity, the expense is greater. It is only by prompt handling that the business of large packing centers, like Omaha, can be kept going. Each day's work in the unloading and disposing of live stock, must be cleaned up because, many times, there will be just as much live stock to handle on the day following.

* * * * * * *

Driven Into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	2,023	1,036	22,458	24,554	66
February	2,242	566	21,353	12,254	107
March	2,861	723	20,683	18,647	172
April	3,504	506	19,264	12,674	104
May	2,603	580	20,263	16,000	120
June	2,997	820	29,056	15,713	57
July	2,130	532	22,584	17,227	119
August	1,838	711	25,305	5,139	81
September	2,111	854	19,908	17,583	86
October	2,795	753	17,021	24,505	173
November	2,101	632	16,209	40,145	55
December	3,221	733	30,510	30,363	38
Total year 1922	30,426	8,446	264,614	234,804	1,178
Total 1921	20,744	6,830	216,894	131,908	932

[fol. 394] City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	57,161	1,817	144,267	117,517	....
February	59,399	1,612	180,945	125,115	....
March	73,460	1,789	159,858	134,300	....
April	68,881	1,739	152,707	95,986	....
May	98,631	1,903	211,706	126,143	....
June	93,875	3,411	263,481	112,017	....
July	80,175	2,332	208,154	148,722	....
August	78,340	3,754	194,665	161,105	....
September	74,137	4,967	158,429	151,516	....
October	97,754	6,648	134,636	174,281	....
November	61,587	3,952	146,204	124,315	....
December	73,270	2,133	274,103	139,849	....
Total year	916,670	36,057	2,229,155	1,610,866	....
Total 1921	794,982	35,101	1,973,411	1,738,034	....

Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	107,675	6,292	278,182	202,555	361	8,882
February	108,125	7,792	260,233	175,056	614	8,604
March	121,116	8,027	229,605	176,866	728	8,766
April	103,774	5,672	202,526	131,767	490	7,515
May	140,004	5,381	248,526	155,431	608	9,874
June	132,402	6,816	318,002	141,140	309	10,392
July	111,763	5,414	261,714	212,493	480	8,977
August	146,034	12,772	235,102	302,455	764	10,374
September	173,662	22,589	195,018	299,594	1,191	10,735
October	215,680	27,766	153,588	356,147	2,058	11,937
November	134,776	14,072	168,131	207,784	722	8,198
December	117,132	9,515	288,755	171,499	546	8,904
Total year...	1,612,143	132,108	2,839,382	2,532,787	8,871	113,158
Total 1921...	1,340,492	94,084	2,665,276	2,752,962	6,779	103,060

[fol. 395] Exhibit 4d, 1923

Unlike any other business in a great many respects, a stock yards must of necessity be in readiness to handle whatever stock may be tendered it and handle it expeditiously, therefore, a large yarding and feeding force of labor, together with the equipment necessary, must be on hand all hours of the day and night to properly care for the live stock immediately upon its arrival. The facilities are of the best that modern construction affords, built, arranged and equipped to give prompt and efficient service to its patrons. The number of head of live stock received in the yards by motor truck is increasing each year, and the necessary facilities have been provided to unload and care for this stock as soon as it arrives no matter what the hour may be.

Live stock is, in nearly all cases, sold on the day of arrival, and always for spot cash, remittance being made on day of sale. The value of the livestock received in Omaha during the year 1923 amounted to a total of $250,000,000 and that means that more than $4,800,000 per week goes back to the stock raisers and feeders of this country.

For those not familiar with the operation of a stock yards it is explained that the South Omaha Stock Yards is an open market. Owners and shippers who desire to handle and sell their own live stock may do so or they may employ commission men if they so desire. The Stock Yards Company does not buy or sell live stock on a com-

mission basis or otherwise and has no control over the prices; the company has nothing to do with the sale of live stock as that is handled entirely by the owner or the commission firms. The Stock Yards Company really operates a great live stock hotel, accommodating a daily average receipt of over 20,000 head of Live Stock, and while the receipts are less than this on some days, there are a great many days when they exceed 60,000 head.

* * * * * * *

The live stock received at the South Omaha Market during the year 1923 came from twenty-three states of the Union. A statement showing the receipts by states to emphasize the territory served by this market is given below:

[fol. 396] Receipts for the Year 1923

Origin	Cattle	Hogs	Sheep
Arizona	345	.....	.....
Colorado	101,822	1,531	217,888
California	1,407	.....	159,538
Illinois	44	.....	.....
Iowa	240,056	388,414	63,113
Idaho	12,087	.....	646,219
Kansas	43,156	.....	9,639
Minnesota	10,266	.....	112
Montana	18,668	77	20,305
Missouri	9,063	879	3,403
Nebraska	1,042,347	3,034,883	1,030,074
New Mexico	9,881	95	1,956
New York	14	.....	.....
Nevada	822	.....	75,550
North Dakota	.....	.....	1,180
Oklahoma	11,706	.....	177
Oregon	2,009	.....	109,764
So. Dakota	68,862	215,652	80,485
Texas	33,071	392	249
Utah	6,301	.....	86,383
Wyoming	180,787	7,430	361,589
Washington	62	143	2,028
Wisconsin	156	.....	.....
Total	1,792,932	3,649,496	2,969,652

The disposition of the live stock received during the year 1923 makes a very interesting statement and is given below:

Disposition of Stock Year 1923

Origin	Cattle	Hogs	Sheep
Sold to Packers	1,019,850	2,963,974	1,806,216
Forwarded—First Hand—Offered but not sold	5,094	4,511	42,289
Forwarded — Not Sold — Simply Fed in Transit	17,020	26,380	42,208
Sold to Foreign Packers, Order Buyers and Traders	750,968	654,631	1,078,939
Total	1,792,932	3,649,496	2,969,652

[fol. 397] Drived into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and Mules
January	4,637	853	31,742	42,785	81
February	3,335	1,293	27,581	34,434	79
March	1,856	473	13,917	28,294	118
April	4,402	990	36,050	34,514	78
May	3,809	827	31,849	41,253	79
June	2,857	573	31,705	14,402	50
July	3,162	639	39,560	9,522	69
August	2,364	746	35,319	12,032	94
September	1,639	614	21,940	18,621	155
October	2,444	981	26,797	28,843	89
November	2,527	1,030	29,274	22,678	107
December	4,519	1,288	34,968	34,220	65
Total year 1923	37,551	10,307	360,702	316,598	1064
Total 1922	30,426	8,446	264,614	234,804	1178

City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	99,438	4,103	315,115	183,286	...
February	70,330	2,274	233,467	168,417	...
March	80,679	2,385	263,762	173,824	...
April	99,180	1,739	242,280	175,969	...
May	99,359	2,233	228,658	182,494	...
June	87,542	2,230	237,660	105,231	...
July	81,283	3,795	261,584	152,447	...
August	70,518	5,063	224,793	118,773	...
September	82,390	5,844	155,306	160,503	...
October	92,904	8,197	185,823	163,011	...
November	59,876	3,543	184,425	102,113	...
December	70,965	3,132	273,362	140,886	...
Total year	995,464	44,538	2,786,235	1,826,954	...
Total 1922	915,670	36,051	2,229,155	1,610,866	...

[fol. 398] Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	148,633	9,375	367,985	246,458	1,428	11,705
February	113,089	6,460	338,058	250,667	1,495	9,931
March	122,789	6,046	421,096	255,546	1,182	11,870
April	143,234	5,660	333,284	205,074	821	10,776
May	142,447	5,236	287,306	209,281	496	10,045
June	125,400	4,226	314,506	118,188	236	9,740
July	112,038	6,101	358,780	214,503	1,570	10,110
August	134,189	13,274	326,606	263,512	2,061	10,759
September	186,126	13,471	195,990	422,362	2,280	11,438
October	200,079	17,758	196,368	424,420	2,765	11,823
November	135,309	12,639	211,538	163,300	1,403	8,324
December	121,332	8,021	297,983	196,341	1,072	9,062
Total year	1,684,665	108,267	3,649,496	2,969,652	16,809	125,583
Total 1922..	1,612,143	132,108	2,823,382	2,532,787	8,871	113,158

Exhibit 4e, 1924

The live stock received at the South Omaha Market during the year 1924 came from twenty-two states of the Union and a shipment from Canada. A statement showing the receipts by states to emphasize the territory served by this market is given below:

[fol. 399] Receipts for the Year 1924

Origin	Cattle	Hogs	Sheep
Arizona	27	.....	2,385
Colorado	82,579	13,919	205,505
California	.....	.....	11,458
Illinois	17	.....	.....
Iowa	237,473	374,555	90,516
Idaho	8,495	.....	704,715
Kansas	26,146	.....	9,098
Minnesota	6,027	901	239
Montana	11,234	2,133	15,046
Missouri	7,527	899	2,450
Nebraska	1,187,794	3,355,352	1,043,180
New Mexico	10,289	60	.....
Nevada	1,188	.....	93,773
North Dakota	35	.....	277
Oklahoma	3,104	122	142
Oregon	2,433	.....	162,059

Origin	Cattle	Hogs	Sheep
So. Dakota	86,181	197,899	79,768
Texas	38,814	.....	1,353
Tennessee	46	.....	....
Utah	2,550	89	98,839
Wyoming	150,518	32,359	323,378
Washington	.....	.....	240
Canada	69	.....	.....
Total	1,862,546	3,978,288	2,844,421

The disposition of the live stock received during the year 1924 makes a very interesting statement and is given below:

Disposition for the Year 1924

Origin	Cattle	Hogs	Sheep
Sold to Packers	1,124,438	3,299,512	1,721,509
Forwarded—First Hand—Offered but not sold	4,944	1,180	11,865
Forwarded—Not Sold—Simply Fed in Transit	14,665	11,612	35,459
Sold to Foreign Packers, Order Buyers and Traders	718,499	665,975	1,075,588
Total	1,862,546	3,978,288	2,844,421

[fol. 400]

Driven into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	4,573	1,033	31,740	40,931	129
February	3,908	952	35,458	27,685	98
March	3,243	979	30,029	22,967	258
April	4,874	1,289	38,221	20,243	170
May	5,394	931	36,867	21,581	144
June	4,808	720	39,108	13,057	52
July	6,225	780	40,959	9,107	33
August	3,621	693	32,929	14,481	130
September	3,393	1,108	25,204	9,396	225
October	3,513	1,514	23,982	13,195	54
November	3,383	1,157	34,952	24,207	165
December	3,475	1,147	45,451	36,854	136
Total year 1924..	50,410	12,203	414,900	253,704	1,594
Total 1923.....	57,551	10,307	360,702	316,598	1,064

City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	104,751	3,481	340,724	176,882	....
February	76,685	3,633	319,460	156,016	....
March	90,186	3,934	327,925	150,245	....
April	88,155	4,334	274,367	127,673	....
May	96,132	4,467	273,436	100,681	....
June	87,052	3,707	299,826	136,342	....
July	84,655	5,020	272,307	157,876	....
August	82,719	5,678	169,980	151,704	....
September	107,095	8,645	161,184	215,680	....
October	95,437	10,574	148,403	116,889	....
November	80,407	5,220	176,550	99,507	....
December	90,569	4,751	359,121	153,884	....
Total year	1,083,843	63,444	3,123,283	1,743,379	....
Total 1923	994,464	44,538	2,786,235	1,826,954	....

[fol. 401] Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	157,137	6,670	405,200	255,207	1,158	12,568
February	124,163	5,450	425,852	207,427	1,325	11,344
March	142,288	6,533	428,282	197,520	1,062	12,133
April	139,314	7,142	339,855	175,778	468	10,525
May	144,975	7,217	339,109	125,008	747	10,465
June	125,301	6,169	373,324	177,328	193	10,415
July	119,659	6,843	378,342	226,702	733	10,372
August	133,942	7,702	240,548	339,459	1,477	9,671
September	205,731	15,480	202,934	552,873	1,418	12,551
October	211,073	18,438	176,838	254,016	1,882	11,061
November	127,444	9,906	232,450	137,415	1,139	7,980
December	127,897	6,072	436,454	196,688	833	10,713
Total year	1,758,924	103,622	3,978,288	2,844,421	12,435	129,798
Total 1923	1,684,685	108,267	3,649,496	2,969,652	16,809	125,583

Exhibit 4f, 1925

Statement Showing Territory Served

The live stock received at the South Omaha Market during the year 1925 came from twenty-two states of the Union. A statement showing the receipts by states to emphasize the territory served by this market is given below:

[fol. 402] Receipts for the year 1925

Origin	Cattle	Hogs	Sheep
Arizona	.....	.....	902
Colorado	85,241	5,144	274,886
California	1,397	.....	84,522
Illinois	20	.....	.....

Origin	Cattle	Hogs	Sheep
Iowa	253,545	596,294	93,423
Idaho	4,353	.....	542,425
Kansas	8,170	.....	5,431
Minnesota	2,908	.....	1,238
Montana	10,825	1,351	21,421
Missouri	4,471	1,108	2,557
Nebraska	1,099,870	2,535,867	796,212
New Mexico	4,347	.....	1,480
Nevada	.....	.....	22,483
North Dakota	.....	.....	300
Oklahoma	1,028	.....	234
Oregon	29	.....	113,614
So. Dakota	94,203	200,789	53,241
Texas	8,912	.....	88,856
Wyoming	126,288	14,654	312,160
Washington	.....	.....	2,013
Wisconsin	27	.....	.....
Total	1,708,820	3,355,207	2,419,551

The disposition of the live stock received during the year 1925 makes a very interesting statement and is given below:

Disposition for the Year 1925

Disposal	Cattle	Hogs	Sheep
Sold to Packers	1,068,783	2,601,578	1,626,629
Forwarded—First Hand—Offered but not sold	4,335	388	21,958
Forwarded—Not Sold—Simply Fed in Transit	15,400	8,080	69,696
Sold to Foreign Packers, Order Buyers and Traders	620,302	745,161	701,268
Total	1,708,820	3,355,207	2,419,551

[fol. 403] Driven into Yards

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	5,282	1,667	44,143	20,874	162
February	4,001	1,245	33,765	17,747	220
March	5,576	2,182	34,024	5,473	189
April	6,665	1,655	34,883	8,727	104
May	7,357	1,797	38,712	12,198	73
June	6,256	1,822	47,474	7,922	33
July	5,427	1,879	37,654	8,486	56

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
August	3,503	1,343	30,782	6,989	157
September	4,113	2,261	28,382	5,762	125
October	4,140	2,789	23,904	5,489	126
November	5,017	2,244	33,196	20,519	77
December	7,727	2,493	46,443	18,239	66
Total year 1925	65,064	23,377	433,362	138,425	1,388
Total 1924 ...	50,410	12,303	414,900	253,704	1,594

City Use and South Omaha Packing

Months	Cattle	Calves	Hogs	Sheep	Horses and mules
January	88,636	6,046	362,285	143,425	...
February	65,154	5,323	313,172	131,438	...
March	87,644	7,508	243,167	166,842	...
April	80,864	4,066	195,319	144,064	...
May	78,252	4,809	195,362	131,970	...
June	83,205	5,571	260,800	132,390	...
July	80,426	8,118	174,127	141,598	...
August	87,892	4,400	143,318	149,836	...
September	97,274	11,259	127,626	149,940	...
October	102,692	14,074	109,530	89,335	...
November	91,331	8,252	136,079	88,590	...
December	89,239	5,853	164,566	121,339	...
Total year ..	1,032,609	85,279	2,425,350	1,591,076	...
Total 1924..	1,083,843	63,444	3,123,283	1,743,379	...

[fol. 404] Total Receipts for Year by Months

Months	Cattle	Calves	Hogs	Sheep	Horses and mules	Total No. cars
January	130,287	7,197	455,569	175,773	1,576	11,104
February	100,275	6,807	406,613	193,477	2,193	9,627
March	129,308	10,051	314,691	229,341	1,838	9,976
April	118,057	6,203	255,549	178,995	558	8,502
May	104,519	5,449	278,848	156,049	155	8,143
June	106,291	6,287	379,064	149,514	204	9,494
July	111,264	9,111	245,945	188,495	744	8,087
August	140,207	8,334	206,791	287,235	2,239	9,080
September	176,783	15,628	187,964	383,329	1,704	10,368
October	205,130	20,738	163,946	200,853	2,130	10,431
November	141,169	11,287	198,956	119,428	1,106	7,990
December	129,309	9,129	261,271	157,062	885	8,481
Total year	1,592,599	116,221	3,355,207	2,419,551	15,332	111,283
Total 1924	1,758,924	103,622	3,978,288	2,844,421	12,435	129,798

Receipts of Cars by Railroads for Twenty Years

Years	C. & N.W. (e)	C. & N.W. (w)	C. B. & Q. (e)	C. B. & Q. (w)	C. G. W.	C.M. & St.P.	C.R.I. & P. (e)	C.R.I. & P. (w)	C.St.P.M. & O.	Ill. Central	Mo. Pac.	Union Pac.	Wabash	Total
1906	2,823	22,575	2,900	21,538	1,070	2,193	2,484	1,064	5,443	1,032	2,128	21,366	532	87,148
1907	3,061	24,339	2,305	22,187	1,086	2,425	2,466	1,120	5,415	1,038	1,949	21,711	523	89,625
1908	2,486	23,693	2,631	20,867	1,127	2,480	2,040	1,030	4,773	1,087	1,697	19,658	540	84,109
1909	2,247	23,790	2,341	21,317	1,180	2,008	1,658	811	5,168	960	1,362	20,932	602	84,376
1910	2,703	24,692	1,944	23,667	1,152	2,381	2,296	591	5,080	1,169	1,265	21,284	625	88,849
1911	2,897	28,098	2,169	23,455	1,095	2,619	2,722	789	5,992	1,156	1,359	21,174	788	94,313
1912	3,980	22,682	2,532	23,584	1,076	3,033	3,367	790	5,593	1,646	1,555	21,878	826	92,542
1913	3,212	23,286	2,277	21,133	967	2,419	3,321	937	5,679	1,387	2,005	20,790	728	88,141
1914	3,511	21,770	2,405	18,706	1,208	2,579	3,038	642	5,580	1,402	1,664	19,940	694	83,139
1915	5,767	25,733	2,442	21,682	1,966	3,682	4,407	621	6,608	2,456	1,100	24,562	760	101,786
1916	4,971	27,405	2,448	25,252	2,015	3,831	4,014	773	7,156	2,422	2,196	28,874	830	112,187
1917	5,002	29,630	3,127	25,868	1,803	3,237	3,973	1,082	7,707	1,937	3,267	29,679	637	116,949
1918	6,747	36,484	5,137	26,439	1,996	4,271	5,693	1,386	9,556	2,430	1,819	34,612	823	137,393
1919	7,782	34,939	3,861	27,514	1,404	3,018	4,623	1,022	10,347	2,194	1,147	34,356	591	132,798
1920	5,994	30,347	3,653	21,492	1,280	2,965	4,304	712	8,459	1,852	1,130	27,751	558	110,497
1921	3,233	27,771	4,397	20,329	1,049	1,981	3,602	1,147	8,532	1,229	2,647	26,455	688	103,060
1922	2,246	29,389	4,028	23,310	1,058	3,046	3,650	2,269	9,313	1,200	3,010	30,076	563	113,158
1923	2,717	34,668	5,209	23,238	1,326	2,764	4,071	2,350	9,644	1,434	2,436	35,131	595	125,583
1924	2,892	37,473	4,455	24,857	1,229	1,784	3,905	2,065	9,876	1,447	2,354	36,982	479	129,798
1925	2,864	31,252	3,315	25,077	996	1,902	3,690	1,471	6,275	1,387	1,559	31,124	371	111,283

[fol. 405]

Shipments of Cars by Railroads for Twenty Years

Years	C. & N. W. (e)	C. & N. W. (w)	C. B. & Q. (e)	C. B. & Q. (w)	C. G. W.	C. M. & St. P.	C. R. I. & P. (e)	C. R. I. & P. (w)	C. St. P. M. & O.	Ill. Centarl	Mo. Pac.	Union Pac.	Wabash	Total
1906	2,206	1,516	3,961	960	616	1,878	2,137	177	1,206	880	927	1,043	1,418	18,925
1907	2,935	1,297	5,329	1,168	521	1,947	2,842	137	987	819	625	865	1,131	20,603
1908	3,275	1,274	5,058	1,363	352	1,719	2,306	192	773	504	999	1,156	1,459	20,430
1909	2,588	1,458	6,315	1,354	515	1,509	2,481	194	1,077	745	587	1,087	1,019	20,929
1910	3,224	1,632	6,790	1,673	722	1,808	2,816	228	1,230	957	1,157	1,326	1,997	25,560
1911	3,309	1,403	6,430	1,951	667	2,045	3,272	194	1,104	780	788	1,361	1,392	24,696
1912	3,443	1,642	6,829	1,691	565	2,020	2,516	157	1,176	670	1,762	1,169	1,337	24,977
1913	4,295	1,933	5,487	1,499	977	2,320	2,912	162	1,547	835	1,261	1,138	1,772	26,138
1914	2,616	2,524	4,724	1,623	717	1,776	2,520	184	1,433	732	1,103	1,827	1,242	23,021
1915	3,410	2,890	7,433	2,685	667	1,865	3,667	182	1,200	690	832	2,311	3,013	30,845
1916	3,402	3,628	5,925	2,894	600	2,160	3,600	272	1,633	1,014	1,031	2,513	3,884	32,556
1917	5,456	4,185	6,596	3,235	879	2,128	4,593	295	2,403	1,181	2,405	2,729	3,659	39,744
1918	9,893	3,111	10,348	2,665	2,121	3,536	4,104	778	1,675	1,928	2,409	2,563	3,252	48,388
1919	7,602	3,558	9,545	3,233	1,363	3,197	3,899	1,154	2,003	2,727	1,434	3,394	4,469	47,578
1920	5,892	2,864	9,769	2,666	1,322	2,065	3,428	1,059	2,114	2,670	1,054	3,226	2,685	40,814
1921	4,705	2,711	6,152	1,377	1,813	2,246	3,337	302	1,858	1,535	1,979	3,074	2,528	33,617
1922	4,975	3,251	8,622	1,667	1,968	3,142	3,405	415	2,382	1,454	2,139	2,444	2,387	38,251
1923	6,685	2,934	9,684	1,836	1,414	3,359	2,741	408	2,649	1,240	4,354	1,987	1,987	41,278
1924	5,350	2,756	7,790	1,737	1,007	3,513	2,766	482	1,964	1,023	5,513	2,395	1,353	37,649
1925	4,436	1,773	5,904	1,502	751	3,610	2,438	471	1.287	1,152	4,882	2,246	1,896	32,348

[fol. 406] Total Receipts of Stock for Forty-two Years

Years	Cattle	Calves	Hogs	Sheep	Horses and mules
1884	88,606	.....	83,686	5,593	489
1885	116,963	.....	152,524	19,484	2,027
1886	148,515	.....	447,019	41,490	2,999
1887	239,377	.....	1,056,524	79,422	3,344
1888	355,923	.....	1,262,647	172,138	5,271
1889	473,094	.....	1,224,691	152,517	7,550
1890	615,337	.....	1,702,723	153,873	5,069
1891	601,002	.....	1,537,387	169,865	8,751
1892	755,059	.....	1,613,384	188,588	14,113
1893	852,456	.....	1,406,451	252,273	12,248
1894	821,512	.....	1,932,677	243,945	8,294
1895	586,103	.....	1,186,726	204,870	7,077
1896	586,578	.....	1,216,370	358,005	9,347
1897	810,949	.....	1,610,981	627,160	6,572
1898	812,244	.....	2,101,387	1,085,136	10,392
1899	837,563	.....	2,216,482	1,086,319	34,255
1900	828,204	.....	2,200,926	1,276,775	59,645
1901	818,003	.....	2,414,052	1,314,841	36,391
1902	1,010,815	.....	2,247,428	1,742,539	42,079
1903	1,071,177	.....	2,231,067	1,863,763	52,829
1904	944,192	.....	2,299,627	1,754,365	46,845
1905	1,026,392	.....	2,293,956	1,970,502	45,422
1906	1,079,373	.....	2,393,551	2,165,116	42,269
1907	1,158,716	.....	2,253,652	2,038,777	44,020
1908	1,036,625	.....	2,424,851	2,105,949	39,998
1909	1,124,618	.....	2,135,493	2,167,014	31,711
1910	1,223,533	.....	1,894,314	2,984,870	29,734
1911	1,174,312	.....	2,366,684	2,977,570	31,771
1912	1,017,195	.....	2,886,244	2,950,507	32,520
1913	962,103	.....	2,542,709	3,222,133	31,580
1914	938,817	.....	2,258,620	3,113,889	30,688
1915	1,218,342	.....	2,642,973	3,268,279	41,679
1916	1,434,304	.....	3,116,820	3,170,908	27,486
1917	1,719,822	.....	2,796,596	3,016,631	32,781
1918	1,993,366	.....	3,429,533	3,385,696	22,212
1919	1,874,996	100,240	3,179,116	3,789,188	25,201
1920	1,524,121	78,678	2,708,482	2,890,748	18,751
1921	1,340,492	94,084	2,665,276	2,752,962	6,779
1922	1,612,143	132,108	2,839,382	2,532,787	8,871
1923	1,684,665	108,267	3,649,496	2,969,652	16,809
1924	1,758,924	103,622	3,978,288	2,844,421	12,435
1925	1,592,599	116,221	3,355,207	2,419,551	15,332
Total	41,869,127	733,220	89,876,002	71,530,111	963,636

[fol. 407] Largest Receipts

Largest Receipts in One Day

Cattle—October 13, 1924	32,744
Hogs—February 7, 1917	34,144
Sheep—September 23, 1918	64,651
Horses and Mules—September 9, 1907	3,667
Cars—September 15, 1919	1,358

Largest Receipts in One Week

Cattle—Week ended October 18, 1919	75,933
Hogs—Week ended February 10, 1917	132,553
Sheep—Week ended September 28, 1918	213,005
Horses and Mules—Weew ended June 30, 1900	5,419
Cars—Week ended August 30, 1919	3,558

Largest Receipts in One Month

Cattle—October, 1919	285,270
Hogs—January, 1925	455,569
Sheep—September, 1919	849,811
Horses and Mules—June, 1900	11,389
Cars—September, 1919	14,760

Largest Receipts in One Year

Cattle—1918	1,993,366
Hogs—1924	3,978,288
Sheep—1919	3,789,188
Horses and Mules	59,645
Cars—1918	137,393

EXHIBIT 5 (a-b-c)

Rules Omaha Live Stock Exchange Issued March 15, 1924, with Supplements to Include Changes to Date of Hearing Before Secretary

Material portions are as follows:

Rule Three

Objects

The objects of this Association are: To maintain a commercial exchange; not for pecuniary gain or profit, but to promote uniformity in the customs and usages of members; to inculcate principles of justice and equity in trade; to enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate the speedy adjustment

of business disputes; to acquire and to disseminate valuable commercial and economic information; and generally to secure to its members and patrons the benefits of co-operation on the furtherance of their legitimate pursuits.

[fol. 408] Rule Four

Section 3. There shall also be elected by the members of the Association, a Committee of Arbitration and a Committee of Appeals, consisting of five members each, who shall hold their respective offices for the term of one year each. The qualification for election to either of these Committees shall be the same as for the office of Director. Three members of these Committees shall constitute a quorum for the transaction of business. No person shall be at the same time a member of more than one of these committees.

Rule Eleven

Section 5. No member of this Association shall be a member of any firm doing a live stock commission business at the Union Stock Yards, Omaha, Nebraska, unless each and every person sharing in the profits of such live stock commission firm is a member of this Exchange, where such persons are not more than five (5) in number, and if more than five (5), at least five (5) such persons are members of this Exchange and every person so sharing in the profits shall be either a member of this Exchange or a member of some live stock exchange which is a member of the National Live Stock Exchange.

A statement shall be filed with the Secretary of this Association containing a list of the partners or members of each firm doing a live stock commission business at the Union Stock Yards, Omaha, Nebraska.

[fol. 409] Rule Twelve

Violation of Rules

Section 1. It shall be the duty of the Board of Directors to hear and determine all cases of violation of any of the Rules or By-Laws of this Association.

Section 2. All charges made to the Board of Directors against any member of the Association for any default, misconduct or offense, shall be in writing, and shall be signed by one or more members of the Association, or by a business firm, one or more of whose members shall be members of the Association.

Section 3. In investigations before the Board of Directors or before any Committee of the Association, no person shall be allowed to be represented by professional counsel, but may have the assistance of a member of the Association.

Section 4. No Director shall sit as a member of the Board in the trial of any case or cases in which he or his business associates are interested.

Section 5. It shall be the duty of the Prosecuting Committee when it shall come to its knowledge, either by public rumor or by report, or otherwise, that any offense has been committed by any member against the good name or dignity of this Association, to make a preliminary or informal investigation into the truth or falsity of such rumor or report, and if the said committee, after investigating shall deem any member guilty of such offense as rumored or reported, they shall so report to the Board of Directors with specific charges, whereupon the member thus implicated shall be notified to appear before the Board of Directors to answer such charge or charges and if found guilty, the said member shall be censured, fined, suspended or expelled as provided by the Rules and By-Laws of the Association.

Section 6. No member shall be fined, censured, suspended or expelled without an examination of the charges against him by the Board of Directors, or a duly constituted committee of the Association or Board, nor without having an opportunity to be heard in his own defense.

No examination shall take place until notice has been served upon the accused personally, by the Secretary or any of his assistants, or it may be left at his—the accused's —ordinary place of business, at least one day before such examination, in either of which cases the notice shall be considered sufficient and the examination may proceed whether the accused is present or not.

Section 7. When any member of the Association, or any firm or corporation represented by such membership as provided in Rule 11, or any employee of said member of such firm or such corporation, shall either violate any of the rules or by-laws of the Association, or be guilty of any act of bad faith or dishonest conduct, he shall be censured, fined, suspended or expelled by the Board of Directors, as they may determine from the nature and gravity of the offense committed. But no member may be suspended or expelled for an offense committed by an employee unless such offense is committed with the knowledge or approval of such member. A majority of a quorum sitting at an authorized meeting of the Board of Directors, shall be necessary to censure, fine or suspend, and an affirmative vote of at least six (6) members of the Board of Directors shall be necessary to expel.

Section 8. If in any investigation or trial before the Board of Directors, or before any duly constituted committee of the Association, any member, who shall have had notice from the Secretary in writing to appear and testify in the case shall neglect to appear and testify or shall refuse to answer any questions which may be put to him by the members of said Board or Committees, he shall be subject to suspension by the Board of Directors from all privileges of the Association for such period as said Directors may determine. It is hereby provided that no witness shall be compelled to answer any question which shall criminate himself; nor shall any testimony be admitted, which in the opinion of the Board of Directors or Committees is irrelevant to the case in hearing.

Section 9. A member suspended may be reinstated by a majority vote of the Board of Directors.

Section 10. An expelled member shall not be readmitted to membership except upon payment of the regular initiation fee and annual assessment, and upon satisfactory evidence that he is a fit person for membership in the Association, and then only upon an affirmative vote of at least six members of the Board of Directors provided such vote shall be had at a meeting at least one week suc-eeding a motion to readmit, and in case such expelled member is re-admitted to membership his old certificate of member-

ship shall be cancelled upon the records and a new membership certificate shall be issued to him, the same as to any other new member.

Section 11. Wherever the penalty of expulsion is provided for in these rules or imposed by the Association under its general powers, expulsion shall be understood to mean and to involve the loss and forfeiture of all rights, whether of personal privilege or property rights of any description whatsoever, and the certificate of membership of any expelled member shall be canceled upon the records.

Section 12. When the Board of Directors shall make an examination of charges against a member, they shall have a right to call for a production of the books and correspondence of the member against whom the charges have been presented, in so far, as such books and correspondence relate to the charges under examination, and any refusal to produce such books and papers by any member under examination shall be deemed a violation of the Rules of the Association and may be punished accordingly. But nothing herein shall require any member to produce any books or other papers which might incriminate him in a proceding in the courts.

Rule Thirteen

Arbitration and Appeals Committee—Duties of

Section 1. It shall be the duty of the Committee of Arbitration to hear and determine all cases of disputed claims submitted to them. All evidence in such cases shall be taken under oath or affirmation and shall be duly recorded. In all such adjudications, the Committee shall construe all Rules and By-Laws of the Association as being designated to secure justice and equity in trade and all awards and findings shall be made in conformity therewith.

Section 2. Any award or finding of the Committee of Arbitration may be appealed from and the case may be carried to the Committee of Appeals, provided notice of such appeal shall be given to the Secretary in writing,

within two business days after such award or finding shall have been delivered to the members in controversy.

Section 3. It shall be the duty of the Committee of Appeals to review such cases as may be appealed from the Committee of Arbitration and formally brought before it, and its awards or findings shall be final and binding. The said Committee of Appeals shall receive such new evidence as may be offered under oath or affirmation; and if in its judgment evidence is procured which will justify a rehearing of the case by the Committee of Arbitration, it shall remand the case to the said Committee of Arbitration for re-hearing. Any final award or finding of the Committee of Appeals shall be based on the record of the Committee of Arbitration, and shall be made in like manner as prescribed by Section 1 of this Rule.

Section 4. The Committee of Arbitration and the Committee of Appeals shall each render their awards or findings in writing through the Secretary of the Association, within two business days after their decision shall have been made. Such awards or findings shall be signed by the Chairman of the Committee and shall be certified to by the Secretary. The official record and decisions of these committees may be inspected by any member of the Association upon application to the Secretary.

Section 5. When any member of the Association has failed to promptly comply with and fulfill any award or finding of either the Committee of Arbitration or the Committee of Appeals, made in conformity with the Rules and By-Laws of the Association, he shall upon proof of such delinquency, before the Board of Directors, be by them suspended from all privileges of the Association until he has fully and completely complied with such findings, or awards, when, if no further claims shall be filed against the said member, he shall upon application be reinstated, but an appeal from the decision of the Board of Directors may be taken to the Association at any regular meeting.

Section 6. When from absence or disqualification of regular members, the Committee of Arbitration or Appeals cannot be formed, said committees shall be allowed to fill vacancies with any members willing to serve on whom they may agree; provided members so selected shall not be party

or parties to the controversy in question, and shall be themselves in good standing.

Section 7. Neither party to a question in controversy shall postpone the trial of a case longer than five days after submission, unless cause can be shown therefor, satisfactory to the Committee.

Section 8. If parties to a controversy fail to appear at time set for trial, or request a postponement, they may—if the case is postponed—be assessed with costs, by and for the use of the Committee, in any sum in the Committee's discretion, not exceeding five dollars. The Committee may, however, insist that the trial shall take place without postponement.

Section 9. Fees and all additional costs that may be incurred in the investigation of suits, shall be finally paid by either of the parties in the case, as may be decided by the Committee hearing the same, and shall be included in their award or finding.

Section 10. At the hearing of any case of disputed claims between members, either party shall have a right to call for the production before the Committee of Arbitration or the Committee of Appeals of the books and papers of the opposing party, in so far, as they relate to the transaction in controversy and for any failure to comply with a request of either Committee to produce such books and papers, an award may be made by the committee against the member so refusing.

[fol. 410] Rule Fourteen

Section 11. All live stock purchased or paid for or ordered out or where assistance has been rendered by members, their agents or employees, whether made by or for a speculator, yard trader, feeder, farmer, or other person, shall be deemed a purchase and charged for at the above rates.

Section 12. Members may order out entire shipments of stock where they have sold to the shipper 50% or more thereof.

Section 13. On cars thirty-seven feet or longer in length, an additional charge of 75 cents per foot shall be made, pro-

vided such car contains the minimum weight charged for by the railroad handling same.

Section 14. It shall be deemed a violation of this rule for any member of this Association, or firm, in which he may be a partner, or incorporated company in which he may be a stockholder, or any employee of either of them, to sell cattle, hogs or sheep subject to post-mortem examination, except such as are tagged by the regular Inspector in the yards, or re-actors tagged by duly authorized veterinarians. The Board of Directors shall have authority to appoint such inspectors as may be necessary to make inspections in the absence of regular Government Inspectors.

Section 15. It shall be the duty of each and every member of this Association, or their representatives, offering for sale any live stock on this market, to price each consignment separately, and it shall be deemed a violation of this Rule for said member or representative to refuse to sell any consignment separately priced.

It shall be deemed a violation of this Rule for any member of this Association or firm in which he may be a partner, or incorporated company in which he may be a stockholder, or any employees of either of them to sell live stock at a price contingent upon the price which may be paid for any other live stock. No live stock shall be weighed, the price of which has not been agreed upon before same has been weighed.

Section 16. No member of this Association or their representative shall render or cause to be rendered, an Account Sale of live stock not actually sold, and no member of this Association or representative shall weigh or cause to be weighed any live stock to any person in their employ or to a fictitious name, or to any person not a bona fide purchaser.

Section 17. When it has been reported to the Secretary of the Association that a stock buyer on the Omaha market has bought two or more loads or pieces of loads of stock at the same price, belonging to different owners, from a member of the Association or his employee, it shall be the duty of the Secretary to secure information as to whether each

individual owner of stock included in such sale received the price for his stock at which it was sold.

Any member, or his employee, refusing the Secretary, at any time, the privilege of investigating the books, records, sales, or other memoranda pertaining to said sales, shall be deemed guilty of a violation of this Rule. It shall be the duty of all members of the Association to furnish the Secretary with any information requested by him relative to any transaction made by them in the Omaha Stock Yards.

Should the purchaser of any live stock on the Omaha market refuse to give the Secretary any information requested concerning such purchases it shall be the duty of the Secretary to report same to the Board of Directors.

Section 18. It shall be deemed a violation of this Rule for any member of this Association or firm in which he may have a partnership, or incorporated company in which he may be a stockholder, or any of their employees, to weigh or cause to be weighed any branded cattle before same have been inspected by the regular brand inspectors, or to turn over any branded cattle to any other commission firm or any of their employees, without first notifying the brand inspectors of such transfers.

Section 19. Any evasion of the terms or intent of this Rule shall be deemed a violation thereof, and shall be subject to the penalties herein.

Section 20. No member of this Association shall at the same time be a Yard Trader and a Commission Merchant engaged in the business of buying or selling live stock on commission.

No member of this Association shall allow any of his employees to speculate in live stock in these yards on his own account or for his firm.

Section 21. It shall be deemed a violation of this Rule for any individual, firm or corporation, members of this Association, to allow the use of their name or names in weighing of live stock not actually sold by them.

Section 22. It shall be deemed a violation of this Rule for any individual, firm or corporation, members of this Asso-

ciation, doing a live stock commission business, to act in the dual capacity of buyer and seller, on any shipment of live stock consigned to them.

Section 23. No member of this Association or firm of which he may be a partner, or incorporated company in which he may be a stockholder, shall directly or indirectly, charge or receive, by any device or indirect method whatsoever, less than the rates fixed and prescribed in the foregoing Sections of this Rule, nor by any device or indirect method whatsoever allow or pay any rebate or make any deduction from the rates of commission herein established.

Section 24. Any member of this Association, or firm of which he may be a partner, or incorporated company in which he may be a stockholder, violating any of the provisions of this Rule, shall be censured, fined, suspended, expelled, or any or all of these penalties may be inflicted at the discretion of the Board of Directors.

[fol. 411] Rule Fifteen

Traveling Solicitors

Section 1. No member of this Association shall employ or in any manner pay a traveling or local live stock solicitor. Only members of the Omaha Live Stock Exchange actively and regularly employed in the prosecution of the commission or order-buying business at Omaha, Nebraska, may solicit business for this market, all of whom shall be residents of Omaha, Nebraska, or Council Bluffs, Iowa, and members of this Association. Anyone as above qualified shall be required to register on blanks provided by the Association for that purpose, and shall in person register on the date of his departure from the city and on the date of his return.

No firm shall consume more than 180 days soliciting time in any calendar year, this time to be taken at the discretion of the firm, provided, however, that no member of this Association shall consume more than 60 days soliciting time in any calendar year, and not more than 30 consecutive days at any one time and after having been out for a 30 day period he shall not go out again for 30 days.

It is further provided that no individual, firm, or corporation shall have more than one member engaged in soliciting at the same time.

Section 2. No member of this Association who is engaged in the live stock commission business shall be allowed to use his partners or partners' employees, who are now, or shall hereafter become engaged in some other business, to solicit or influence shipments of live stock to his commission firm.

Section 3. It shall be a violation of this rule for any person representing or claiming to represent a commission merchant, firm or corporation in any other market to solicit for an Omaha commission merchant, firm or corporation. Members of this Association shall be held responsible for the acts of any person, who, under the guise of soliciting for a house at some other market, solicits for an Omaha person, firm or corporation. The distribution of advertising materials, or the giving of any assistance to customers of this market, shall be deemed a violation of this rule.

A member shall not be entitled to the solicitor privilege until he has been a member of the Association in good standing for 30 days, and in the case of a change in employment, he shall not be entitled to the solicitor privilege until 30 days after entering the service of the new employer.

Any member of this Association or firm in which he may be a partner or incorporated company in which he may be a stockholder, violating any of the provisions of this rule, shall suffer the penalties provided in Rule Fourteen.

Rule Seventeen

Telegrams

Section 1. No member of this Association engaged in the live stock commission business shall pay, agree to pay, or cause to be paid the cost of transmission of any telephone or telegraph message, except messages pertaining to inquiries by and for the personal information of members.

Under instructions of the Prosecuting Committee or the Board of Directors, the Secretary shall have the right to demand members' telephone and telegraph bills, and shall also have the right to examine records of all telephone or

telegraph companies that are operating or may operate in territory tributary to this market.

Any member of this Association, or firm in which he may be a partner, or incorporated company in which he may be a stockholder, or any employee of either of them, violating any of the provisions of this rule, shall suffer the penalty provided in Rule Fourteen.

Rule Eighteen

Trades—Members' Responsibility

Section 1. All members of this Association who pay for live stock purchased at these yards by dealers, shall file with the Secretary of the Association a list of the names of all the dealers for whom he or they severally make such payments and such list shall also embrace a declaration of the party or parties filing same, in such manner and form as the Board of Directors or the Association may prescribe, to the effect that he will pay for all the purchases of live stock made by the person or persons therein named; and after any member of the Association shall have filed such list of names as above provided, he shall be held responsible for any sum of money which any dealer whose name appears on such list may have agreed to pay any member of the Association for live stock, until the same shall have been paid in full, or otherwise lawfully settled; provided the member making such sale shall promptly present a bill of the same at the office of the member or firm who guarantees the payment thereof. Such list or notice shall be filed one business day prior to the effective date of the arrangement to be responsible for dealers' trades.

Section 2. When any member of the Association shall have determined to cancel the agreement he may have made with any dealer to pay for his purchases of live stock, he shall first give the Secretary of the Association notice to that effect, and the Secretary shall immediately notify all the members of the Association to the same effect, by sending notice thereof, upon a form prescribed by the Board of Directors of the Association, to their respective places of business; and the liability of the guarantor, in such case, shall cease, when, and only when, all purchases of live stock

made by such dealer shall have been paid in full, or otherwise lawfully settled. Such notice shall be given to the Secretary of the association one business day prior to the termination of business arrangements as described herein.

Section 3. Any member of the Association selling live stock for any dealer, shall return the proceeds of such sale to the member or firm who guarantees the payments of said dealer's purchases.

Section 4. Any member of this Association shall be held responsible for all trades of such dealers in the same manner and to the same extent as they are responsible for the trades of their own salesmen, as prescribed by the rules of this Association.

Section 5. Every member of this Association, and every firm in which a member may be a partner, and every corporation in which a member may be a stockholder shall pay for all live stock purchased by him, them or it, or by his, their or its agents, as provided in Section 1 of this Rule, not later than three o'clock p. m. of the day on which such purchase is made, provided, that the member, firm or corporation making such sale shall present a bill thereof at the last known or customary office of the purchaser not later than two o'clock p. m. of the day of sale.

This provision shall likewise apply to all members and to firms to which a member belongs, and to corporations in which a member shall be a stockholder, when such member, firm or corporation guarantees payment for live stock sold as above. Provided, further, nothing in this Rule shall be construed as affecting the right of purchasers under Rule 22.

In all cases where cattle have been paid for under this rule, before the expiration of the three hour limit, the member, firm, or corporation making such sale shall promptly pay to the purchaser any amount due him, them or it for cattle weighed back under Rule 22.

Section 6. The list of names filed with the Secretary of the Association, as provided in Section 1 of this Rule, shall be open to the inspection of its members and to no other person; and upon the application of any member of the Association, the Secretary shall furnish members for their

own use and for no other purpose, a certified copy of the same.

All members of this Association shall be bound, both for personal observance of the provisions of this rule and for their observance by an partnership in which any member may be a partner and by any corporation in which any member may be a stockholder.

Section 7. No member of this Association selling livestock for commission on the Omaha market shall clear for any regular yard trader who is not a member of one or the other livestock exchange. Dealers or yard traders shall in no case weigh stock to a commission firm.

[fol. 412] Rule Twenty-four

Meals

Section 1. No member of this Association, or his employe, shall buy or cause to be bought or in any manner pay for a meal or meals, between the hours of 5 o'clock a. m. and 6:30 p. m., for any shipper to or patron of the Omaha market. Any violation or evasion of this Rule, or any intent to violate same, shall be punishable by a fine of not more than $100.00 and not less than $50.00 for each and every offense. Provided, that this Rule shall in no wise be construed to apply to any member of this Association while in the country soliciting.

Rule Twenty-five

Section 1. No member of this Exchange shall be guilty of uncommercial conduct or unfair trading in his dealings with his fellow members, or with his customers. Any violation of this Rule shall subject the offender to a fine not exceeding $500.00, or suspension, or expulsion from the Exchange, at the discretion of the Board of Directors.

Section 2. The term "uncommercial conduct" shall include circulating false reports concerning members on any subject, for the purpose of injuring the business or credit of such member; soliciting shipments after same have been consigned to another member which are either in transit or have arrived at the stockyards; organizing or proposing a

boycott against the business of any member; failing to observe rules of business integrity and fair dealing in transactions conducted with customers of the members; any acts contrary to sound business ethics, whether specifically forbidden by law or the rules of the Exchange.

Section 3. It shall be deemed a violation of this rule for any member of this Association, or any firm whose partners or stockholders are members of this Association, to employ or retain in its employ, or clear any trades for any person or firm who has been found guilty of dishonest conduct in connection with business transactions on this market, after charges have been duly filed with, and a hearing had, before the Board of Directors of this Association, and who may have been discharged from the service of member firms, or whose clearing house privileges have been terminated as a result of such findings, and due notice given to members of this Association of such discharge or suspension of privileges, provided parties who may have been discharged under provisions of paragraph above may be re-employed by member firms, or individuals, subject to the approval of the Board of Directors.

Where members or member firms have been found guilty of dishonest practices on the part of any party or parties for whom they have been clearing trades, they shall immediately discontinue such arrangements with said party or parties.

[fol. 413] Rule Twenty-eight

Employment of Parties Expelled from the Exchange for Dishonest Conduct

Section 1. No member of this Association shall employ or retain in his employ, any one who has been expelled or suspended from membership in the Omaha Live Stock Exchange until such time as the person so expelled or suspended shall have been duly re-admitted as a member of this Association as provided by these rules. Violators of this rule shall be subject to the penalties prescribed in Rule Fourteen.

Rule Thirty-one

Weighing Cattle

Section 1. All weighing of cattle shall be regulated by a scale committee of five members. This committee must consist of cattle salesmen who are members of the Association and from five different sections of the cattle yards, and shall be appointed by the President of the Association each year. The committee shall have power to regulate the weighing of cattle, and raising funds therefor. If any firm believes that the rulings of this committee are unjust, they shall have the right to appeal to the Live Stock Exchange, which body shall hear the case and make final decision.

Section 2. If any firm or corporation or employe violates this Rule or the intent of the Rule, such violation shall be reported to the Board of Directors of the Live Stock Exchange. They shall hear the evidence of the committee and of the firm or corporation charged with the offense. The Board of Directors shall fine all violators of this Rule, the amount of said fine being left to the discretion of the Board.

Section 3. It shall be uncommercial conduct for any firm to solicit business with the argument that their scale advantages are better than any other firms. Charges of such uncommercial conduct will be filed with the Board of Directors and prosecuted under Rule for Uncommercial Conduct.

Section 4. It shall be uncommercial conduct for any firm to solicit business by use of any advantage they may have by location of their pens, as regards scales or unloading chutes. Advantages or disadvantages resulting from yard locations are not legitimate means to be used for soliciting or advertising. Charges of uncommercial conduct in violation of this rule shall be filed with the Board of Directors and prosecuted under Rule of Uncommercial Conduct.

Rule Thirty-two

Paying Union Stock Yards Company Employes Tips or for Services

Section 1. Any member or his employe buying any kind of feed, or charging a customer for feed, not bought direct

from the Stock Yards Company, or paying any employe of the Stock Yards Company for any kind of services rendered, shall be fined not less than $50.00 nor more than $100.00 for each violation of this paragraph.

Rule Thirty-four

Section 1. There shall be established in the Exchange Building, under the jurisdiction of the Board of Directors, a Clearing House or collection agency. This office shall be centrally located in the building. All corporations, firms and individuals, members of the Omaha Live Stock Exchange, shall be members of said collection agency. All sales of live stock between members of the collection agency shall be cleared or settled for through this clearing house. The expense of operating said collection agency shall be raised by assessing those doing business through the agency a pro rata amount, according to the business transacted, with a minimum charge of $1.00 per month for each account. Dealers on the Omaha market not members of the Omaha Exchange may have their business cleared through the collection agency upon authority of the Board of Directors by paying their pro rata share of the expense thereof.

Section 2. The time for presenting bills and payment of same shall be designated by the Board of Directors.

Section 3. Any party convicted of a violation of this Rule shall be di-ciplined in any manner, at the discretion of the Board of Directors.

Rule Thirty-six

Each firm doing a commission business on the Omaha market, whose members or stockholders are members of this Association, shall be required to furnish a surety bond in some company approved by the United States Government for the benefit of all concerned. These bonds shall be in such sums and contain such conditions, uniform to all members, as may be prescribed by the Board of Directors of the Omaha Live Stock Exchange. Any person, firm or corporation failing to give such bond, or failing to renew the same within five days after notice of cancellation by the surety under any provision to that effect in the bond itself,

may, by the Board of Directors of the Exchange, be suspended from transacting business on the Exchange until such bond be given or renewed.

Rule Thirty-seven

No solicitations for money, donations, gifts or charity in any form will be allowed in the Live Stock Exchange Building except those authorized in writing by the Secretary of the Omaha Live Stock Exchange and then only upon the approval of the committee of three appointed annually by the President of the Exchange for that purpose, whose identity shall be known only to the officers of the Exchange.

Rule Thirty-eight

No member of this Exchange shall be required or authorized by any rule or by-law to do any act that shall in any manner violate the provisions of, or be in conflict with, the Packers and Stockyards Act of nineteen twenty-one or any of the rules and regulations of the Secretary of Agriculture lawfully issued thereunder.

[fol. 414] EXHIBIT 6

Code of Firm Names and Numbers as Referred to in the Oral Testimony

50. American Commission Co.
41. Lou Bick Commission Co.
33. Bliss & Son.
25. Bliss, Wellman & Hopkins.
17. Boetel Commission Company.
9. Bowles Livestock Com. Co.
1. Bryson Brothers.
51. Alex G. Buchanan & Son.
42. Burke-Rickley Company.
34. Byers Bros. & Co.
18. John Clay & Company.
10. Clifton Commission Co.
2. Byron Clow & Company.
26. Central Livestock Com. Co.

52. Corn Belt Commission Co.
43. Cox-Jones Commission Co.
35. W. F. Denny & Co.
27. Donahue Brothers, Inc.
19. Allen Dudley Company.
11. Dworak-Stolinski Com. Co.
3. Farris-Marcy Company.
53. Fonda-Kells-Christie Co.
44. Frazier-Johnson Company.
36. Gant Livestock Com. Co.
28. Great Western Commission Co.
20. Greene-Madden Company.
60. Globe Commission Company.
12 Ingwersen & Daugherty.
4. Inter-State L. S. Com. Co.
54. Jackson Livestock Company.
45. Jacob Jacobs Livestock Com. Co.
37. Laird Livestock Com. Co.
29. Leverty Brothers.
21. Lee Livestock Com. Co.
13. Lindley-Cahow Company.
5. McAdams Brothers & Ihnen.
55. McCullough Commission Company.
46. Martin Brothers.
38. Melady Brothers.
30. Mutual Livestock Com. Co.
6. Randall L. S. Com. Co.
14. John Ralston L. S. Com. Co.
56. Record Livestock Com. Co.
47. L. E. Roberts Company.
39. Roberts Brothers & Rose.
31. C. O. Robinson & Company.
23. Rosenbaum Brothers.
15. Security Livestock Com. Co.
7. W. R. Smith & Son.
57. Snyder-Malone-Coffman.
48. Tagg Bros. & Moorhead.
40. Triangle Livestock Com. Co.
32. Word-Murphy Commission Co.
24. Williams & Son.
16. Winn Brothers.
49. Geo. M. Wood Sheep Com. Co.

8. Wood Brothers.
58. Wood-Oswald Company.
22. Omaha L. S. Com. Co.

George S. Murray books not available—Respondent has left this market.

[fol. 415] EXHIBIT 7

Auditor's Report, Year Ending December 31, 1925

Firm No. 1

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash on Hand	$400.00	
Cash in Bank	14,865.52	
	$15,265.52	
Accounts Receivable	633.21	
Total Current Assets		$15,898.73
Fixed:		
Office & Operating Equipment	3,104.19	
Less Reserve for Depreciation	1,917.67	
Total Fixed Assets		1,186.52
Deferred:		
Advertising Supplies on Hand		611.44
Total Assets		$17,696.69

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co.	$2,747.10	
" " —Other	1,700.38	
Estrays Held a/c Brands	50.29	
Total Current Liabilities		$4,497.77
Net Worth:		
Capital Stock	5,000.00	
Surplus	8,198.92	
Total Net Worth		13,198.92
Liabilities and Net Worth		$17,696.69

[fol. 416] Firm No. 1

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash on Hand	$400.00	
Cash in Bank	13,714.21	
	$14,114.21	
Accts. Receivable	61.93	
Total Current Assets		$14,176.14
Fixed:		
Office and Operating Equipment	3,129.19	
Less Reserve for Depreciation	2,382.29	
Total Fixed Assets		746.90
Deferred:		
Advertising Supplies on Hand		618.04
Total Assets		$15,541.08

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co.	$2,163.26	
Accounts Payable—Other	5,550.14	
Total Current Liabilities		$7,713.40
Net Worth:		
Capital	5,000.00	
Surplus	2,827.68	
Net Worth		7,827.68
Total Liabilities and Net Worth		$15,541.08

[fol. 417] Firm No. 1

South Omaha, Nebraska

Profit and Loss Statement for Year Ending December 31, 1925

Exhibit C.

Income:		
Commissions Selling	$39,981.68	
Buying	952.90	
Total Operating Income		$40,934.58

Expenses:		
Salaries:		
Owner-Salesmen	16,000.00	
Non-Owner salesmen	7,800.00	
" " Office	4,500.00	
" " Yardman	1,511.00	
Total Salaries	29,811.00	
Bonuses paid	150.00	
Split Commission paid (Sheep)	296.47	
Advertising	6,359.61	
Stationery & Office Expense	395.25	
Exchange Assessment & Dues	482.74	
Telephone & Telegraph	357.15	
Rent	840.00	
Meals	35.10	
Bond Premium	71.00	
Legal and Auditing	100.00	
General Postage	147.42	
Horse & Saddle	365.00	
Travel & Entertainment	129.90	
Depreciation Furniture & Fixture	464.62	
Insurance	300.20	
Donations	70.00	
Local & State Tax	77.85	
Errors & Adjustments	12.44	
Miscellaneous	37.26	
Total Operating Expense		$40,503.01
Net Operating Income		431.57
Other Deductions:		
Bad Accts. charged off		28.37
Net Gain		$403.20

[fol. 418] Firm No. 1

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$13,198.92
Additions:		
Net Gain	$403.20	
Income—Prior Minor items	33.02	
		436.22
Total		13,635.14
Deductions:		
Dividends declared	5,000.00	
Income Tax 1924	774.86	
Compensation Ins. 1922	32.60	
Total Deductions		5,807.46
Net Worth December 31, 1925		$7,827.68

[fol. 419] Firm No. 1

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule. 1.

		Nos.		
Owners:				
#1	President, Manager, Cattle Sales....	12	$9,000.00	
#2	Secy's-Treas. Hog Sales	12	7,000.00	
	Total Owners Salaries			$16,000.00
Non-Owners:				
#3	Cattle Sales	12	3,300.00	
#4	" "	12	2,400.00	
#5	Hog "	12	2,100.00	
	Total Salesmen		7,800.00	
#6	Office Mgr.	12	2,400.00	
#7	Stenographer	12	2,100.00	
	Total Office		4,500.00	
#8	Yardmen	12	1,500.00	
#9	Extra Yardman.....		11.00	
	Total Yardmen		1,511.00	
	Total Non-Owner Salaries			$13,811.00
	Total Salaries			$29,811.00

[fol. 420] Firm No. 1

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves.....	$17,772.72		
Hogs	12,365.97		
Sheep	297.50		
		$30,436.19	
Mixed Cars		3,162.04	
Drive-in and Truck-in Sales:			
Cattle	598.20		
Calves	214.20		
Hogs	3,094.16		
Sheep	249.78		
	4,156.34		

Dealer and Speculator Sales:			
Cattle & Calves	1,636.00		
Hogs	591.11		
		2,227.11	
Total Selling Commissions			$39,981.68

Buying

Straight Cars:			
Cattle & Calves	800.00		
Sheep	134.00		
		934.00	
Drive-out and Truck-out Purchases:			
Cattle	7.50		
Hogs	3.60		
Sheep	7.80		
		18.90	
Total Buying Commissions			952.90
Total Commissions			$40,934.58

[fol. 421] Firm No. 1

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle & Calves	922	....	24,329
Hogs	831	9	58,222
Sheep	13	3	2,372
Total	1,766	12	84,923
Mixed Cars			
Cattle & Calves / Hogs / Sheep	170	....	1,741 / 7,344 / 392
Total	170	....	9,477
Drive-in and Truck-in Sales:			
Cattle	.....	....	745
Calves	.....	....	533
Hogs	.....	....	11,150
Sheep	.....	....	838
Total	.....	....	13,266

Dealer and Speculator Sales:			
Cattle & Calves	.....	....	3,966
Hogs	.....	....	6,133
Total	.....	....	10,099
Total selling	1,936	12	117,765

Buying

Straight Cars:			
Cattle & Calves	53	....	1,792
Sheep	1	6	2,029
Total	54	6	3,821
Drive-out and Truck-out Purchases:			
Cattle	.....	....	10
Hogs	.....	....	18
Sheep	.....	....	39
Total	.....	....	67
Total Buying	54	6	3,688
Total Volume	1,990	18	121,653

[fol. 422] Auditor's Report Year Ended December 31, 1925

Firm No. 2

South Omaha, Nebraska

Balance Sheet as at December 31 ,1924

Exhibit A

Assets

Current:			
Cash on hand	$11.02		
Proceeds Receivable	54.35		
Accounts Receivable	16,056.29		
Total Current Assets		$16,121.66	
Fixed:			
Office & Operating Equipment	1,281.11		
Total Fixed Assets		1,281.11	
Goodwill		7,200.00	
Total Assets			$24,602.77

Liabilities and Net Worth

Current:			
Bank overdraft	$2,285.69		
Proceeds Payable (Branded Cattle)	63.25		
Accts. Payable—Yard Co	$904.24		
" " —Other	1,875.77	2,780.01	
Notes Payable	7,500.00		
Total Liabilities			$12,628.95

Net Worth:

Capital Stock	10,000.00	
Additional Capital invested	1,104.91	
Undivided Profits	868.91	
Total Net Worth		11,973.82
Total Liabilities and Net Worth		$24,602.77

[fol. 423]

Firm No. 2

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash on Hand	$247.37	
Cash in Bank Genl. Acct	1,094.40	
	$1,341.77	
Accounts Receivable	2,005.70	
Total Current Assets		$3,347.47
Fixed:		
Office & Operating Equipment	1,178.61	
Real Estate	6,000.00	
Total Fixed Assets		7,178.61
Deferred		.08
Good Will		7,200.00
Total Assets		$17,726.16

Liabilities and Net Worth

Current:			
Bank Overdraft—Proceeds Payable		$1,436.42	
Proceeds Payable (Branded Cattle)		398.43	
Accts. Payable—Yard Co.	$821.91		
" " —Other	2,632.47		
		3,454.38	
Notes Payable		9,500.00	
Total Current Liabilities		$14,789,23	
Net Worth:			
Capital Stock		10,000.00	
Additional Capital invested		1,104.91	
		$11,104.91	
Less Deficit		8,167.98	
Total Net Worth			2,936.93
Total Liabilities and Net Worth			$17,726.16

[fol. 424]

Firm No. 2

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$17,934.35		
Buying Commission	2,538.00	$20,472.35	
Miscellaneous Income		417.29	
Gross Income		20,889.64	
Less deductions		7.90	
Total Operating Income			$20,881.74
Expenses:			
Owners' Salaries:			
Salesmen	9,000.00		
Non-Owners' Salaries:			
Salesmen	2,700.00		
Yardmen	1,151.66		
Office	2,953.23		
Extra Help	26.00		
Total Salaries		15,830.89	
Split Commissions Paid		27.25	
Travel and Entertainment		1,321.79	
Advertising		1,333.25	
Telephone & Telegraph		339.08	
Stationery & Office Supplies		390.64	
Charity and Donations		37.00	
Rent		840.00	
Horse and Saddle		304.10	
Insurance		260.35	
Taxes		41.69	
Exchange Assessment & Dues		351.40	
Meals		517.99	
Errors and Adjustments		.01	
Unexplained		11.58	
Miscellaneous		452.50	
Total Operating Expenses			22,059.52
Net Operating Loss			$1,177.78
Other Income:			
Miscellaneous			43.73
Total			1,134.05
Other Deductions:			
Miscellaneous			603.16
Net Loss			$1,737.21

[fol. 425] Firm No. 2

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$11,973.82
Additions:		
Old Account recovered	$20.30	
Adjustment Gross Sales Account	53.39	
" Collections Account	116.67	
" Branded Cattle Account	63.25	
" Freight Account	39.35	
Sales of Share in Addressograph	10.82	
Sundry Account Loss	1.38	
		305.16
		12,278.98
Deduct:		
Net Loss—1925	1,737.21	
Difference in Balances	24.79	
Old Accounts Charged off	7,580.05	
		9,342.05
Net Worth December 31, 1925		$2,936.93

[fol. 426] Firm No. 2

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1

Owners' Salaries:		
Cattle Department:		
#1 Salesman Full time	$6,000.00	
#2 " " "	3,000.00	
Total Owners' Salaries		$9,000.00
Non-Owners' Salaries:		
#5 Salesman—Hog—Full time		2,700.00
#3 Yardman—Cattle 5 Mos. (½ time)	263.33	
#4 " " 5 " " "	312.50	
Total Yardmen—Cattle	575.83	
#6 Yardman—Hog 5 Mos. (½ time)	263.33	
#7 " " 5 " " "	312.50	
Total Yardmen—Hog	575.83	
Total Yardmen		1,151.66

Office:			
#8 Bookkeeper 7 Mos.	1,348.33		
#9 " 6 "	754.90		
#10 Stenographer 6 "	850.00		
Total Office Salaries		2,953.23	
Extra Help:			
Various, Part time		26.00	
Total Salaries			$15,830.80

[fol. 427]

Firm No. 2

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars:			
Cattle & Calves		$9,515.00	
Hogs		4,039.27	
Sheep		69.18	
			$13,623.45
Mixed Cars			1,498.30
Drive-Ins and Truck-Ins:			
Cattle		809.15	
Calves		98.00	
Hogs		1,183.96	
Sheep		10.00	
			2,101.11
Dealer and Speculators:			
Cattle		708.00	
Hogs		33.18	
			741.18
			17,964.04
Less Unlocated Difference			29.69
Total Selling			$17,934.35

Buying

Straight Cars:			
Cattle & Calves		$2,412.50	
Hogs		96.00	
			$2,508.50
Drive-Outs and Truck-Outs:			
Cattle		25.00	
Calves		4.50	
			29.50
Total Buying			$2,538.00

[fol. 428] Firm No. 2

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

	Cars		
	S. D.	D. D.	Head
Selling			
Straight Cars:			
Cattle & Calves	516	..	13,525
Hogs	274	6	20,137
Sheep	...	3	448
	790	9	34,110
Mixed Cars:			
Cattle & Calves	...	..	908
Hogs	81	..	3,307
Sheep	...	..	95
	81	..	4,310
Drive-Ins and Truck-Ins:			
Cattle	...	..	1,012
Calves	...	..	245
Hogs	...	..	4,250
Sheep	...	..	50
	...	..	5,557
Dealer and Speculators:			
Cattle	...	..	1,757
Hogs	...	..	391
			2,148
Total Selling	871	9	46,125
Buying			
Straight Cars:			
Cattle & Calves	163	..	4,940
Hogs	16	..	844
	179	..	5,784
Drive-Outs and Truck-Outs:			
Cattle	...	..	47
Calves	...	..	9
			56
Total Buying	179	..	5,840

[fol. 420] EXHIBIT 9

Auditor's Report, Year Ended December 31, 1925

Firm No. 3

South Omaha, Nebraska

Balance Sheet as at December 31, 1924 — Exhibit A.

Assets

Current:			
Proceeds Receivable	$5,945.22		
Accounts Receivable	16,253.94		
Total Current Assets		$22,199.16	
Deferred:			
Yard Company		342.19	
Goodwill		5,000.00	
Total Assets			$27,541.35

Liabilities and Net Worth

Current:			
Bank Overdraft	$1,064.51		
Estray Account	35.99		
Accounts Payable (Other)	82.87		
Total Current Liabilities		$1,183.37	
Net Worth:			
Capital		26,357.98	
Total Liabilities and Net Worth			$27,541.35

[fol. 430] Firm No. 3

South Omaha, Nebraska

Balance Sheet as at December 31, 1925 — Exhibit B.

Assets

Current:			
Cash in Bank	$4,103.00		
Accounts Receivable	16,130.21		
Total Current Assets		$20,233.21	
Deferred:			
Yard Company		207.50	
Goodwill		5,000.00	
Total Assets			$25,440.71

Liabilities and Net Worth

Current:			
Accounts Payable (Other)		$48.16	

Net Worth:		
Capital	25,392.55	
Total Liabilities and Net Worth		$25,440.71

[fol. 431] Firm No. 3

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$26,028.87		
Buying Commission	1,139.90		
		$27,168.77	
Less Errors and Corrections		4.20	
Net Operating Income			$27,164.57
Expenses:			
Non-Owners' Salaries:			
Salesmen	9,000.00		
Order Buyers	1,380.00		
Yardmen	3,555.00		
Office	1,740.00		
Extra Help	100.00		
Commission paid as salary	152.20		
Total Salaries		15,927.20	
Travel & Entertainment	901.70		
Advertising	1,659.88		
Rent	510.00		
Telephone & Telegraph	239.83		
Stationery & Office Expense	163.16		
General Postage	87.50		
Charity & Donations	47.00		
Insurance	131.05		
Taxes	14.81		
Bond Premiums	194.20		
Exchange Assessments & Dues	282.55		
Errors and Adjustments	8.61		
Miscellaneous	90.38		
		4,330.67	
Total Operating Expenses			20,257.87
Net Operating Profit			6,906.70
Other Income			105.31
Total			7,012.01
Other Deductions			205.84
Net Gain			$6,806.17

[fol. 432]

Firm No. 3

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth as Per Books December 31, 1924		$26,420.44
Adjustment—Bank Exchange to Expense		62.46
Adjusted Net Worth as of December 31, 1924		26,357.98
Additions:		
Net Gain	$6,806.17	
Error—Trial Bal	.50	
		6,806.67
Total		33,164.65
Deductions:		
Withdrawals		7,772.10
Net Worth December 31, 1925		$25,392.55

[fol. 433]

Firm No. 3

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

	Mos.		
Non-Owners' Salaries:			
#1 Cattle Salesman	12	$4,200.00	
#2 " "	12	4,800.00	
Total Salesmen Salaries			$9,000.00
#3 Cattle Order Buyer	12		1,380.00
#4 *Hog Yardman	12	1,755.00	
#5 **Cattle & Hog Yardman	12	1,800.00	
Total Yardmen's Salaries.			3,555.00
#6 Office	12		1,740.00
Extra Help:			
Cattle Yard		40.00	
Office		60.00	
Total Extra Help			100.00
Commission Paid as Salary:			
½ Commission for selling sheep			152.20
Total Salaries (Non-Owners)			$15,927.20

*Yardman #4—also sells all the truck hogs. Possibly 50% of time selling.

**Cattle & Hog Yardman #5—Estimated by bookkeeper about half time as cattle yardman and half time as hog yardman.

[fol. 434] Firm No. 3

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$7,718.58		
Hogs	7,405.22		
Sheep	192.35	$15,316.15	
Mixed Cars:		3,526.92	
Drive-in and Truck-in Sales:			
Cattle	1,001.50		
Calves	303.45		
Hogs	3,380.38		
Sheep	61.03	4,746.36	
Dealer and Speculator Sales:			
Cattle & Calves	593.20		
Hogs	1,836.92	2,430.12	
		26,019.55	
Unlocated Differences		9.32	
Total Selling Commissions			$26,028.87

Buying

Straight Cars:			
Cattle & Calves	1,031.00		
Sheep	20.00	1,051.00	
Drive-out and Truck-out Purchases:			
Cattle	78.70		
Sheep	10.20	88.90	
Total Buying Commissions			$1,139.90

[fol. 435] Firm No. 3

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		No.
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	396	..	10,719
Hogs	492	7	37,321
Sheep	2	8	1,763
	890	15	49,803

	Cars S. D.	Cars D. D.	No. Head
Mixed Cars:			
Cattle & Calves	189	..	2,043
Hogs			8,720
Sheep			336
	189		11,099
Drive-in and Truck-in Sales:			
Cattle	...	..	1,279
Calves	...	..	751
Hogs	...	..	12,165
Sheep	...	..	306
			14,501
Dealer and Speculator Sales:			
Cattle & Calves	...	..	1,439
Hogs	...	..	19,353
			20,792
Total Selling	1,079	15	96,195
Buying			
Straight Cars:			
Cattle & Calves	69	..	2,199
Sheep	...	1	305
	69	1	2,504
Drive-outs and Truck-outs:			
Cattle	...	..	1,133
Sheep	...	..	51
			164
Total Buying	69	1	2,668

[fol. 436]

Ex. 10

Auditor's Report Year Ended December 31, 1925

Firm No. 4

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

Current:		
Cah on Hand	$500.00	
Cash in Bank	2,750.28	
	$3,250.28	
Proceeds Receivable	940.92	
Accounts Receivable	3,829.22	
Accrued Interest Receivable	2.30	
Other Investments	1,500.00	
Miscellaneous	92.34	
Total Current Assets		$9,615.06

Fixed:			
Membership	6,677.86		
Office & Operating Equipment	1,594.00		
Real Estate & Farms	2,604.25		
Total Fixed Assets		10,876.11	
Total Assets			$20,491.17

Liabilities and Net Worth

Net Worth:			
Capital	3,000.00		
Surplus	14,491.17		
Total Net Worth		20,491.17	
Total Liabilities and Net Worth			$20,491.17

[fol. 437] Firm No. 4

South Omaha, Nebraska

Balace Sheet as at December 31, 1925

Exhibit B

Assets

Current:			
Cash on hand	$500.00		
Cash on Bank	9,343.47		
		$9,843.47	
Accounts Receivable		3,525.65	
Accrued Int. Receivable		98.40	
Other Investments		6,410.84	
Total Current Assets		$19,878.35	
Fixed:			
Membership	4,300.00		
Office & Operating Equipment	1,844.00		
Real Estate & Farms	3,329.25		
Total Fixed Assets		9,473.25	
Total Assets			$29,351.61

Liabilities and Net Worth

Current:			
Proceeds Payable (held account of brand)	3,992.57		
Estray Account	47.46		
Accounts Payable, Yard	282.57		
Accrued Liabilities	97.50		
Miscellaneous	66.71		
		4,486.81	

Net Worth:

Capital (Partners)	3,728.54	
Surplus	21,136.26	
Total Net Worth		24,864.80
Total Liabilities and Net Worth		$29,351.61

[fol. 438]

Firm No. 4

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:

Selling Commission	$66,851.73		
Buying Commission	2,367.20		
		$69,218.93	
Split Commission Received		1,053.25	
Gross Income			$70,272.18
Less Deductions			4.00
Total Operating Income			$70,268.18

Expenses:

Owners' Salaries:

Salesmen	12,700.00	
Office	6,000.00	
		18,700.00

Non-Owners' Salaries:

Salesmen	5,885.00	
Order Buyers	2,650.00	
Yardmen	4,128.75	
Office	3,508.26	
Extra Help	87.50	
Com. Paid as Salary	621.95	
		16,881.46
Total Salaries		35,581.46

Bonuses Paid	430.00
Travel & Entertainment	6,449.76
Advertising	5,150.57
Rent	1,170.00
Telephone & Telegraph	596.42
Stationery & Office Expense	691.74
General Postage	309.19
Charity & Donations	153.00
Horse & Saddle	127.14
Insurance	586.65
Taxes	69.91
Bond Premium	59.00

Exchange Assessments & Dues..	1,135.00		
Legal & Audit.....	82.50		
Meals	692.07		
Errors & Adjustments.....	26.62		
Miscellaneous	761.45		
		18,491.02	
Total Operating Expense.....			54,072.48
Net Operating Profit.....			16,195.70
Other Income			220.89
			16,416.59
Other Deductions			496.58
Net Gain.....			15,920.01

[fol. 439] Firm No. 4

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924.....		$20,491.17
Additions:		
Net Gain.....	$15,920.01	
Other	3,070.68	
		18,990.69
		39,481.86
Deductions:		
Other		14,617.06
Net Worth, December 31, 1925.....		$24,864.80

[fol. 440] Firm No. 4

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
1 Cattle Salesman, Full Time	$6,000.00		
2 Cattle Salesman, Full Time	4,200.00		
3 Hog Salesman, 5 Mo..	2,500.00		
		$12,700.00	
4 Office, 12 Mo.....		6,000.00	
Total Owners' Salaries.....			$18,700.00

Non-Owners' Salaries:

5 Calf Salesman, Full Time	2,175.00			
6 Hog Salesman, 7 Mo.	1,400.00			
7 Hog Salesman, Full Time	2,310.00			
		5,885.00		
8 Feeder Buyer, Full Time	2,310.00			
		2,650.00		
9 *Cattle Yards, Full Time	1,085.00			
10 Hog Yards, 2-3/4 Mo.	343.75			
11 Hog Yards, Full Time	1,900.00			
12 Hog Yards, 5 Mo. ..	800.00			
		4,128.75		
13 Bookkeeper, Full Time	2,244.35			
14 Bookkeeper, 1/2 Mo. .	116.91			
15 *Stenographer, Full Time	1,085.00			
16 Stenographer, 1/2 Mo.	62.00			
		3,508.26		
Extra Help		87.50		
Com. Paid as Salary		621.95		
Total Non-Owners' Salaries			16,881.46	
Total Salaries				$35,581.46

*Same employee—time divided.

[fol. 441] Firm No. 4

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$35,310.58		
Hogs	15,811.26		
Sheep	868.95		
		$51,990.79	
Mixed Cars		6,390.95	
Drive-in and Truck-in Sales:			
Cattle	935.26		
Calves	175.59		
Hogs	2,867.64		
Sheep	136.56		
		4,115.05	
Dealer and Speculator Sales:			
Cattle and Calves	3,003.45		
Hogs	1,351.49		
		4,354.94	
Total Selling			$66,851.73

Buying

Straight Cars:		
Cattle and Calves	2,146.55	
Hogs	57.00	
Sheep	94.00	
	2,297.55	
Dealer and Speculator Purchases:		
Cattle and Calves	69.65	
Total Buying		$2,367.20

[fol. 442] **Firm No. 4**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars S. D.	No. Cars D. D.	No. Head
Straight Cars:			
Cattle and Calves	1,756	..	50,958
Hogs	1,036	19	76,524
Sheep	17	29	9,041
	2,809	48	136,523
Mixed Cars:			
Cattle and Calves			3,720
Hogs	.....	..	14,845
Sheep			537
	409	..	19,102
Drive-In and Truck-Ins:			
Cattle	.....	..	1,169
Calves	.....	..	426
Hogs	.....	..	10,205
Sheep	.....	..	675
	.....	..	12,475
Dealer and Speculator Sales:			
Cattle and Calves	.....	..	77,316
Hogs	.....	..	13,893
	.....	..	21,209
Total Selling	3,218	48	189,309

Buying

Straight Cars:			
Cattle & Calves	136	..	4,228
Hogs	4	..	997
Sheep	1	4	1,382
	141	4	6,607
Dealer and Speculator Purchases:			
Cattle and Calves	.....	..	133
Total Buying	141	4	6,740

[fol. 443] EXHIBIT 11

Auditor's Report Year Ended Dec. 31, 1925

Firm No. 5

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

Current:			
Cash in Bank	$895.54		
Accounts Receivable	2,027.99		
Notes Receivable	692.39		
Total Current Assets		$3,615.92	
Fixed:			
Office & Operating Equipment		370.15	
Total Assets			$3,986.07

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.	$969.45		
Accounts Payable—Other	302.36		
Total Current Liabilities		$1,271.81	
Net Worth:			
Capital	2,714.26		
Total Net Worth		2,714.26	
Total Liabilities and Net Worth			$3,986.07

[fol. 444] Firm No. 5

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank	$331.16		
Accounts Receivable	710.06		
Notes Receivable	662.39		
Total Current Assets		$1,703.61	
Fixed:			
Office & Operating Equipment	365.15		
Total Fixed Assets		365.15	
Total Assets			$2,068.76

Liabilities and Net Worth

Current:			
Accounts Payable	$58.35		
Accrued Liabilities	60.00		
Total Current Liabilities		$118.35	
Net Worth:			
Capital	1,950.41		
Total Net Worth		1,950.41	
Total Liabilities and Net Worth			$2,068.76

[fol. 445] Firm No. 5

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$19,297.41		
Buying Commission	1,022.50		
		$20,319.91	
Less Deductions		2.55	
Total Operating Income			$20,317.36
Expense:			
Non-Owners' Salaries—			
Salesmen	1,900.00		
Order Buyer	740.00		
Yardmen	125.00		
Office	1,250.00		
Extra Help	1,480.20		
Total Salaries		5,495.20	
Travel and Entertainment	1,907.99		
Advertising	2,621.07		
Rent	360.00		
Telephone and Telegraph	200.16		
Stationery & Office Expense	395.83		
General Postage	149.50		
Charity and Donations	10.00		
Horse & Saddle	20.90		
Insurance	99.30		
Taxes	15.02		
Bond	35.00		
Exchange Assessments & Dues	319.31		
Legal and Auditing	207.58		
Meals	78.05		
Errors and Adjustments	14.03		
Miscellaneous	218.03		
		6,651.77	
Total Operating Expense			12,146.97
Net Operating Profit			8,170.39
Other Deductions:			
Miscellaneous			6.50
Net Gain			$8,163.89

[fol. 446] Firm No. 5

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$2,714.26
Additions:		
Net Gain	$8,163.89	
Other	474.86	
		8,638.75
Total		$11,353.75
Deductions:		
Other		9,402.60
Net Worth December 31, 1925		$1,950.41

[fol. 447] Firm No. 5

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Non-Owners' Salaries:			
#1. Cattle Salesman	10½ Mos.	$1,300.00	
#2. " "	4 "	600.00	
			$1,900.00
#3. Order Buyer	3½ "		740.00
#4. Yardman	1 "		125.00
#5. Office	9 "		1,250.00
#6. Extra Help			1,480.20
Total Salaries			$5,495.20

[fol. 448] Firm No. 5

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars		
Cattle & Calves	$10,495.33	
Hogs	4,459.45	
Sheep	216.70	
		$15,171.48
Mixed Cars		1,576.81

Truck-Ins and Drive-Ins:			
Cattle	264.60		
Calves	66.25		
Hogs	406.37		
Sheep	9.00		
		746.22	
Dealer and Speculator Sales			
Cattle & Calves	903.48		
Hogs	899.42		
		1,802.90	
Total Selling Commissions			$19,297.41

Buying

Straight Cars			
Cattle	957.75		
Calves	30.00		
Sheep	20.00		
		1,007.75	
Truck-Outs			
Cattle	3.75		
Sheep	4.00		
		7.75	
Yard Purchases			
Hogs	7.00		
		7.00	
Total Buying Commissions			1,022.50
Total Commissions			$20,319.91

[fol. 449] **Firm No. 5**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 8

Selling

	No. cars		
	DD	DD	No. Head
Straight Cars			
Cattle & Calves	548	....	14,926
Hogs	308	....	21,661
Sheep	4	7	2,319
Total	860	7	38,906
Mixed Cars			
Cattle & Calves	...	....	902
Hogs	84	....	3,725
Sheep	...	....	123
Total	84	....	4,750

	No. cars		
	DD	DD	No. Head
Drive-Ins & Truck-Ins			
Cattle	...	....	341
Calves	...	....	166
Hogs	...	....	1,455
Sheep	...	....	45
Total	...	....	2,007
Dealer and Speculator Sales			
Cattle & Calves	...	....	1,877
Hogs	...	....	9,454
Total	...	....	11,331
Total Selling	944	7	56,994
Buying			
Straight Cars			
Cattle	63	....	2,028
Calves	2	....	111
Sheep	...	1	292
Total	65	1	2,431
Drive-Out and Truck-Out Purchases			
Cattle	...	....	5
Sheep	...	....	20
Total	...	....	25
Yard Sales			
Sheep	...	....	68
Total Buying	65	1	2,524
Total Volume	1,009	8	59,510

[fol. 450]

EXHIBIT 12

Auditor's Report Year Ended December 31, 1925

Firm No. 6

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit "A."

Assets

Current:		
Cash on Hand	$100.00	
Cash in Bank	3,910.12	
	$4,010.12	
Proceeds Receivable	1,683.35	
Accounts Receivable	13.84	
Miscellaneous	10.34	
Total Current Assets		$5,717.65

Fixed:			
Memberships	6,500.00		
Furniture & Fixtures	2,408.54		
Total Fixed Assets		8,908.54	
Total Assets			$14,626.19

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.	$2.06		
Accounts Payable—Other	3.50		
	$5.56		
Total Current Liabilities		$5.56	
Net Worth:			
Capital Stock	10,000.00		
Surplus	4,620.63		
Total Net Worth		14,620.63	
Total Liabilities and Net Worth			$14,626.19

[fol. 451] Firm No. 6

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit "B."

Assets

Current:			
Cash on Hand	$181.34		
Cash in Bank	2,372.78		
	$2,554.12		
Accounts Receivable	548.92		
Total Current Assets		$3,103.04	
Fixed:			
Memberships	6,500.00		
Office & Operating Equip.	2,557.99		
Less: Depreciation	383.69		
	2,174.30		
Total Fixed Assets		8,674.30	
Total Assets			$11,777.34

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.	$1.10		
Accounts Payable—Other	4,710.46		
Total Current Liabilities		4,711.56	

Net Worth:			
Capital Stock		10,000.00	
Deficit		2,934.22	
Total Net Worth			7,065.78
Total Liabilities and Net Worth			$11,777.34

[fol. 452] Firm No. 6

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit "C."

Income:			
Selling Commissions	$33,106.44		
Buying Commissions	759.20		
		$33,865.64	
Miscellaneous Income		705.00	
			$34,570.64
Less Deductions			14.42
Total Operating Income			$34,556.22
Expenses:			
Owners' Salaries:			
Salesmen	15,120.00		
Feeder Buyer	4,380.00		
		19,500.00	
Non-Owners' Salaries:			
Salesmen	2,400.00		
Office	4,200.00		
Yardmen	1,350.00		
Extra Help	15.00		
		7,965.00	
Total Salaries			27,465.00
Bonuses Paid		100.00	
Clearance & Split Com. Paid		96.10	
Travel & Entertainment		1,270.03	
Advertising		3,692.21	
Rent		630.00	
Telephone & Telegraph		298.70	
Stationery & Office Expense		1,750.21	
General Postage		14.93	
Charity & Donations		45.00	
Horse & Saddle		218.95	
Insurance		352.47	
Taxes		84.08	
Bond Premiums		87.50	
Exchange Assessments & Dues		659.88	
Legal & Auditing		75.00	
Meals		232.75	
Depreciation		383.69	

Errors & Adjustments	2.00	
Miscellaneous	156.38	
	10,149.88	
Total Operating Expenses		37,614.88
Net Operating Loss		3,058.66
Other Deductions:		
Miscellaneous		348.38
Net Loss		$3,407.04

[fol. 453] Firm No. 6

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit "D."

Net Worth, December 31, 1924		$14,620.63
Additions:		
Gain on Fixed Assets		29.70
Total		14,650.33
Deductions:		
Net Loss	$3,407.04	
Dividends	3,620.63	
Federal Income Tax	518.36	
Other	38.52	
		7,584.55
Net Worth, December 31, 1925		$7,065.78

[fol. 454] Firm No. 6

South Omaha, Nebraska

Statement of Salaries Year ended December 31, 1925

Schedule #1

Owners' Salaries			
Salesmen			
#1	Pres.—Cattle Salesman Full Time	$7,800.00	
#2	2nd Vice-Pres.—Hog Salesman "	3,900.00	
#3	" " " " " "	3,420.00	
	Total Salesmen		$15,120.00
#4	Sec'y-Treas.—Feeder Buyer (salesman)*		4,380.00
	Total Owners' Salaries		$19,500.00

*95% time sorting and selling and yarding cattle; 5% buying feeder cattle.

Non-Owners Salaries			
#5	Calf & Cow Sales & Head Yardman F. T.		2,400.00
#6	Office Full Time	2,400.00	
#7	Office & Hog Yardman Full Time	1,800.00	
	Total Office		4,200.00
#8	Cattle Yardman 10 mos.	1,125.00	
#9	Cattle Yardman 1½ Mos.	225.00	
	Total Yardmen		1,350.00
	Extra Help—Office	9.00	
	Extra Help—Yard	6.00	
	Total Extra Help		15.00
	Total Non-Ownores' Salaries		7,965.00
	Total Salaries		27,465.00

[fol. 455]

Firm No. 6

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars			
Cattle and Calves	$21,765.96		
Hogs	4,588.42		
Sheep	143.65		
		$26,498.03	
Mixed Cars		2,121.57	
Drive-Ins Sand Truck-Ins			
Cattle	500.80		
Calves	34.80		
Hogs	1,056.64		
Sheep	30.60		
		1,622.84	
Dealers and Speculators			
Cattle and Calves	2,857.00		
Hogs	7.00		
		2,864.00	
Total Selling			$33,106.44

Buying

Straight Cars			
Cattle and Calves		736.50	
Drive-Outs and Truck-Outs			
Cattle	10.50		
Hogs	12.20		
		22.70	
Total Buying			759.20

[fol. 456]

Firm No. 6

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars	Head
Straight Cars:		
Cattle & Calves	1,117	30,792
Hogs (D. D. 15)	304	22,602
Sheep (D. D. 5)	6	1,464
	1,427	54,858
Mixed Cars:		
Cattle and Calves Hogs Sheep	112	1,496 4,259 40
	112	5,795
Drive-Ins and Truck-Ins:		
Cattle	.....	632
Calves	.....	87
Hogs	.....	3,807
Sheep	.....	153
		4,679
Dealer and Speculator Sales:		
Cattle and Calves	.....	6,370
Hogs	.....	60
		6,430
Total Selling	1,539	71,762

Buying

Straight Cars:		
Cattle and Calves	48	1,692
Drive-Outs and Truck-Outs:		
Cattle	.....	14
Hogs	.....	61
		75
Total Buying	48	1,767

[fol. 457] EXHIBIT 13

Auditor's Report Year Ending December 31, 1925

Firm No. 7

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$397.62		
Cash in Bank	9,672.34		
		$10,069.96	
Proceeds Receivable		360.51	
Accounts Receivable		78.52	
Notes Receivable		2,151.72	
Liberty Bonds		2,500.00	
Total Current Assets			$15,160.71
Fixed:			
Branch Account		4,000.00	
Membership		50.00	
Office & Operating Equipment		1,140.00	
Total Fixed Assets			5,190.00
Total Assets			$20,350.71

Liabilities and Net Worth

Current:			
Accounts Payable (Yard Co.)		$246.53	
Accounts Payable (Other)		1,047.79	
Accrued Interest Payable		700.00	
Total Current Liabilities			$1,994.32
Net Worth:			
Capital			18,356.39
Total Liabilities and Net Worth			$20,350.71

[fol. 458] Firm No. 7

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$554.56		
Cash in Bank—Firm Account	5,807.08		
Cash in Bank—Shippers Pro. Acct.	7,526.79		
		$13,888.43	
Accounts Receivable		1,661.98	
Notes Receivable		2,151.72	
Liberty Bonds		2,500.00	
Total Current Assets			$20,202.13

Fixed:			
Branch Account		4,000.00	
Membership		50.00	
Office & Operating Equip.	$2,197.35		
Less: Reserve for Depreciation	340.23		
		1,857.12	
Total Fixed Assets			5,907.12
Deferred:			
Yard Company			9.26
Total Assets			$26,118.51
Current Liabilities:			
Accounts Payable (Yard Co.)		$7,521.81	
Accounts Payable (Other)		1,315.89	
Total Current Liabilities			$8,837.70
Net Worth:			
Capital Investment		11,749.77	
Undivided Profits		5,531.04	
Total Net Worth			17,280.81
Total Liabilities and Net Worth			$26,118.51

[fol. 459] Firm No. 7

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$37,753.30	
Buying Commission		939.60	
Total		38,692.90	
Clearance Commission Received		577.27	
Total Operating Income			$39,270.17
Expenses:			
Owners Salaries:			
Salesman	$7,000.00		
Non-Owners Salaries:			
Salesmen	2,700.00		
Yardmen	2,975.00		
Office	4,690.00		
Extra Help	1,274.00		
Total Salaries		18,639.00	
Travel and Entertainment	3,957.88		
Advertising	4,999.72		
Rent	570.00		
Telephone & Telegraph	1,344.01		
Stationery & Office Supplies	397.28		

General Postage	420.63	
Charity & Donations	120.00	
Insurance	299.55	
Taxes	53.64	
Bond Premium	50.00	
Exchange Assessments & Dues	310.10	
Legal & Auditing	50.00	
Depreciation	340.23	
Unexplained Items	82.90	
Miscellaneous	346.69	
		13,342.63
Total Operating Expense		31,981.63
Net Operating Profit		7,288.54
Other Income:		
Interest		244.15
		7,532.69
Other Deductions:		
Miscellaneous		2,001.65
Net Gain		$5,531.04

[fol. 460] Firm No. 7

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$18,356.39
Additions:		
Net Gain		5,531.04
Total		23,887.43
Deductions:		
Withdrawals	$6,282.24	
Bad Debt—Prior Period	324.38	
		6,606.62
Net Worth, December 31, 1925		$17,280.81

[fol. 461] Firm No. 7

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners Salaries:		
Sheep Salesman:		
No. 1—Full Time	$7,000.00	
Total Owners Salaries		$7,000.00

Non-Owners Salaries:			
Sheep Salesmen:			
No. 2—Full Time		2,700.00	
Sheep Yardmen:			
No. 3—Full Time	$1,975.00		
No. 4—7 Months	1,000.00		
		2,975.00	
Office Salaries:			
No. 5—Full Time	2,775.00		
No. 6—Full Time	960.00		
No. 7—9 Months	955.00		
		4,690.00	
Extra Help		1,274.00	
Total Non-Owners Salaries			11,639.00
Total Salaries			$18,639.00

[fol. 462] Firm No. 7

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars by Rail		
Sheep	$37,065.10	
Drive-Ins and Truck-Ins		
Sheep	668.20	
Total Selling Commissions		$37,733.30

Buying

Straight Car by Rail		
Sheep	$844.00	
Drive-Outs and Truck-Outs		
Sheep	95.60	
Total Buying Commissions		939.60
Total Commissions Buying and Selling		$38,692.90

[fol. 463] Firm No. 7

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

Selling

	No. Cars		
	Single	Double	No. Head
Straight Cars by Rail			
Sheep	36	1,807	475,480
Drive-Ins and Truck-Ins			
Sheep	..	.....	5,348
Total Selling	36	1,807	480,828

Buying

	No. Cars Single	No. Cars Double	No. Head
Straight Cars for Rail			
Sheep	6	38	13,079
Drive-Outs Truck-Outs			
Sheep	..	.....	478
Total Buying	6	38	13,557
Total Volume	42	1,845	494,385

[fol. 464] EXHIBIT 14.

Auditor's Report Year Ended December 31, 1925

Firm No. 8

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current			
Cash on hand	$900.00		
Cash in Bank	16,128.64		
		$17,028.64	
Proceeds Receivable	16,503.68		
Accounts Receivable	5,105.23		
		21,608.91	
Notes Receivable		208,954.44	
Stock Investment		5,000.00	
Total Current Assets			$252,591.99
Fixed			
Office & Operating Equipment	3,796.08		
Less Reserve for Depreciation	1,320.91		
		2,475.17	
Total Fixed Assets			2,475.17
Deferred			
Real Estate of Doubtful Value		6,136.53	
Deferred Expense & Bad Debts		1,897.19	
Total Deferred Charges			8,033.63
Total Assets			$263,100.79

Liabilities and Net Worth

Current			
Estray Account		676.86	
Accts. Payable (Yard Co.)	$4,051.16		
Accts. Payable (Other)	31,996.36		
		36,047.52	
Notes Payable		22,556.80	
Notes Receivable Discounted		138,736.55	
Total Current Liabilities			$198,017.73

Net Worth			
Capital Invested		50,000.00	
Undivided Profits		15,083.06	
Total Net Worth			65,083.06
Total Liabilities and Net Worth			$263,100.79

[fol. 465] Firm No. 8

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$900.00		
Cash in Bank	11,209.40		
		$12,109.40	
Proceeds Receivable	13,756.04		
Accounts Receivable	7,184.60		
		20,940.64	
Notes Receivable	135,989.36		
Less Notes Discounted	76,996.00		
		58,993.36	
Stock Investment		5,000.00	
Total Current Assets			$97,043.40
Fixed:			
Office & Operating Equipment	4,289.82		
Less Reserve for Depreciation	1,609.43		
		2,680.39	
			2,680.39
Total Assets			$99,723.79

Liabilities and Net Worth

Current:			
Bank Overdraft (Proceeds Acct.)		$3,857.20	
Estrays		133.10	
Accounts Payable (Yard Co.)	$2,968.97		
Accounts Payable (Other)	35,361.79		
		38,330.76	
Notes Payable		10,000.00	
Total Current Liabilities			$52,321.06
Net Worth:			
Capital Investment		50,000.00	
Deficit		2,597.27	
Total Net Worth			47,402.73
Total Liabilities and Net Worth			$99,723.79

[fol. 466] Firm No. 8

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$83,933.78	
Buying Commissions		5,970.19	
Total Operating Income			$89,903.97
Expenses:			
Owners Salaries:			
Salesmen	$9,000.00		
Office	4,500.00		
		13,500.00	
Non-Owners' Salaries:			
Salesmen	13,425.00		
Order Buyer	1,500.00		
Yardmen	7,775.00		
Office	5,745.00		
Extra Help	379.00		
		28,824.00	
Total Salaries		42,324.00	
Bonuses Paid	160.00		
Travel & Entertainment	12,091.87		
Advertising	14,879.78		
Rent	1,410.00		
Telephone & Telegraph	1,264.09		
Stationery & Office Expense	3,525.15		
General Postage	567.10		
Charity & Donations	264.90		
Horse & Saddle	393.80		
Insurance	849.59		
Taxes	504.19		
Bond Premium	152.10		
Exchange Assessment & Dues	1,307.05		
Legal & Auditing	337.65		
Depreciation	288.52		
Errors & Adjustments	61.77		
Unexplained Items	316.00		
Miscellaneous	460.87		
		38,834.43	
Total Operating Expense			81,158.43
Net Operating Profit			8,745.54
Other Income:			
Interest on Loans			3,163.54
Total			11,909.08
Other Deductions:			
Miscellaneous			5,090.77
Net Gain			$6,818.31

[fol. 467] Firm No. 8

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$65,083.06
Additions:		
Net Gain		6,818.31
Total		71,901.37
Deductions:		
Prepaid Insurance—Prior	$220.00	
Depreciation "	206.26	
Cattle Loans Charged Off	10,364.69	
" " Interest Charged Off	1,228.92	
" " Legal Expense " "	1,000.00	
Foreclosed Land Tax " "	1,470.40	
Deferred Expense	2,250.68	
Land of no Value	6,136.53	
Deferred Land Tax & Expense	1,621.16	
		24,498.64
Net Worth December 31, 1925		$47,402.73

[fol. 468] Firm No. 8

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners:			
# 1 Cattle Salesmen,	12 Mos.	$4,500.00	
# 2 " "	12 "	4,500.00	
Total		9,000.00	
# 3 Office, 12 Mos.		4,500.00	
Total Owners			$13,500.00
Non-Owners:			
# 4 Cattle Salesmen,	12 Mos.	4,500.00	
# 5 Hog "	12 "	3,825.00	
# 6 " "	12 "	1,800.00	
# 7 Sheep "	12 "	3,300.00	
Non-Owner Salesmen		13,425.00	
# 8 Feeder-Buyer	5 Mos.	1,500.00	
# 9 Hog Yardman	12 "	2,075.00	
#10 " "	12 "	2,100.00	
#11 " "	12 "	1,800.00	
#12 Cattle "	12 "	1,800.00	
Non-Owner Yardmen		7,775.00	

#13 Cashier & Bookkeeper,	12 Mos.		2,400.00	
#14 Stenographer	12 "		1,320.00	
#15 "	12 "		1,200.00	
#16 Multigraph Opr.	11 "		825.00	
Non-Owner Office			5,745.00	
#17 Extra Cattle Yard			70.00	
Sheep "			204.00	
Office			105.00	
Non-Owner Extra			379.00	
Total Non-Owner				28,824.00
Total Salaries				$42,324.00

[fol. 469] Firm No. 8

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$53,276.48		
Hogs	9,529.68		
Sheep	5,617.25		
		$68,423.41	
Mixed Cars		3,420.29	
Drive-Ins and Truck-Ins:			
Cattle	1,997.46		
Calves	251.05		
Hogs	5,330.35		
Sheep	864.60		
		8,443.46	
Speculator and Dealer Sales:			
Cattle & Calves	1,837.80		
Hogs	1,630.02		
Sheep	208.80		
		3,676.62	
Total		83,963.78	
Difference Unlocated		30.00	
			$83,933.78

Buying

Straight Cars:			
Cattle & Calves	$4,041.75		
Hogs	127.00		
Sheep	1,397.44		
		5,566.19	

Drive-Outs and Truck-Outs:

Cattle & Calves	264.20		
Hogs	47.80		
Sheep	92.00		
		404.00	
Total Buying			$5,970.19

[fol. 470] Firm No. 8

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars S. D.	No. Cars D. D.	No. Head
Straight Cars:			
Cattle & Calves	2,888	...	75,954
Cattle & Calves	2,888	...	75,964
Hogs	663	...	46,738
Sheep	27	257	67,729
	3,578	257	190,421
Mixed Cars:			
Cattle & Calves	....	...	2,111
Hogs	184	...	7,026
Sheep	....	...	703
	184	...	9,840
Truck-Ins and Drive-Ins:			
Cattle	...	....	2,583
Calves	...	....	624
Hogs	...	....	19,206
Sheep	...	....	7,351
	...	....	29,764
Dealer and Speculator Sales:			
Cattle & Calves	...	....	4,723
Hogs	...	....	16,765
Sheep	...	....	3,527
			25,015
Total Selling	3,762	257	255,040

Buying

Straight Cars:			
Cattle & Calves	286	....	9,233
Hogs	9	....	1,522
Sheep	19	55	19,566
	294	55	30,321

	No. Cars S. D.	No. Cars D. D.	No. Head
Drive-Outs and Truck-Outs:			
Cattle & Calves	...	....	480
Hogs	...	....	244
Sheep	...	....	606
			1,330
Total Buying	294	55	31,651

[fol. 471]

Ex. 15.

Auditor's Report Ended December 31, 1925

Firm No. 9

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$500.00		
Cash in Bank	20,589.00		
		$21,089.00	
Accounts Receivable		2,045.81	
Notes Receivable		11,321.90	
Total Current Assets			$34,816.71
Fixed:			
Office & Operating Equipment	2,792.61		
Less Reserve for Depreciation	1,114.98		
		1,677.63	
Memberships		8,120.00	
Investment		1,027.20	
Total Fixed Assets			10,824.83
Deferred:			
Prepaid Insurance			119.40
Good Will			1,971.40
Total Assets			$47,732.34

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.		$37.20	
" " —Others		9,460.27	
Total Current Liabilities			$9,497.47
Net Worth:			
Capital Stock		30,000.00	
Surplus & Undivided Profits		8,234.87	
			38,234.87
Total Liabilities and Net Worth			$47,722.34

[fol. 472] Firm No. 9

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand		$500.00	
Accounts Receivable		49,316.64	
Notes Receivable		9,305.95	
Total Current Assets			$59,122.59
Fixed:			
Office & Operating Equipment	$3,254.00		
Less Reserve for Depreciation	1,730.97		
		1,523.03	
Memberships		8,120.00	
Investment		1,510.10	
Total Fixed Assets			11,153.13
Deferred:			
Prepaid Insurance			258.45
Goodwill			1,971.40
Total Assets			$72,505.57

Liabilities and Net Work

Current:			
Bank Overdraft Gen'l Acct.		$1,799.85	
Accounts Payable—Yard Co.	$190.15		
" " —Others ..	3,461.53		
		3,651.68	
Notes Payable		20,000.00	
Accrued Liabilities		108.34	
Total Current Liabilities			$25,559.87
Net Worth:			
Capital Stock		30,000.00	
Surplus & Undivided Profits		16,945.70	
Total Net Worth			46,945.70
Total Liabilities and Net Worth			$72,505.57

NOTE: Cash-Proceeds, and Proceeds Receivable, as well as Proceeds Payable, (which offset each other) are omitted from this Exhibit because said amounts were not posted on general books as at December 31, 1925.

[fol. 473]

Firm No. 9

South Omaha, Nebraska

Profit and Loss Statement Year Ended

December 31, 1925

Exhibit C

Income:			
Selling Commissions	$72,621.26		
Buying Commissions	5,587.30		
		$78,208.56	
Miscellaneous Income		341.00	
		78,549.56	
Less Deductions		6.68	
Total Operating Income			$78,542.88
Expenses:			
Owners' Salaries:			
Salesmen	21,600.00		
Non-Owners' Salaries:			
Salesmen	$9,900.00		
Feeder Buyer	3,275.00		
Yardmen	6,275.41		
Office	4,630.80		
Extra Help	570.30		
	24,651.51		
Total Salaries		46,251.51	
Bonuses Paid	100.00		
Travel & Entertainment	2,667.85		
General Postage	209.60		
Advertising	7,970.36		
Rent	1,410.00		
Stationery & Office Expenses	1,554.30		
Meals	509.50		
Exchange Assessment & Dues	1,183.39		
Horse and Saddle	531.90		
Telephone & Telegraph	871.51		
Insurance	685.26		
Legal and Auditing	205.00		
Taxes	275.27		
Depreciation	615.99		
Errors and Adjustments	19.60		
Miscellaneous	680.19		
		19,489.72	
Total Operating Expenses			65,741.23
Net Operating Profit			12,801.65
Other Income:			
Miscellaneous			271.04
			13,072.69

[fol. 472] Firm No. 9

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand		$500.00	
Accounts Receivable		49,316.64	
Notes Receivable		9,305.95	
Total Current Assets			$59,122.59
Fixed:			
Office & Operating Equipment	$3,254.00		
Less Reserve for Depreciation	1,730.97		
		1,523.03	
Memberships		8,120.00	
Investment		1,510.10	
Total Fixed Assets			11,153.13
Deferred:			
Prepaid Insurance			258.45
Goodwill			1,971.40
Total Assets			$72,505.57

Liabilities and Net Work

Current:			
Bank Overdraft Gen'l Acct.		$1,799.85	
Accounts Payable—Yard Co.	$190.15		
" " —Others	3,461.53		
		3,651.68	
Notes Payable		20,000.00	
Accrued Liabilities		108.34	
Total Current Liabilities			$25,559.87
Net Worth:			
Capital Stock		30,000.00	
Surplus & Undivided Profits		16,945.70	
Total Net Worth			46,945.70
Total Liabilities and Net Worth			$72,505.57

NOTE: Cash-Proceeds, and Proceeds Receivable, as well as Proceeds Payable, (which offset each other) are omitted from this Exhibit because said amounts were not posted on general books as at December 31, 1925.

[fol. 473]

Firm No. 9

South Omaha, Nebraska

Profit and Loss Statement Year Ended

December 31, 1925

Exhibit C

Income:			
Selling Commissions	$72,621.26		
Buying Commissions	5,587.30		
		$78,208.56	
Miscellaneous Income		341.00	
		78,549.56	
Less Deductions		6.68	
Total Operating Income			$78,542.88
Expenses:			
Owners' Salaries:			
Salesmen	21,600.00		
Non-Owners' Salaries:			
Salesmen	$9,900.00		
Feeder Buyer	3,275.00		
Yardmen	6,275.41		
Office	4,630.80		
Extra Help	570.30		
	24,651.51		
Total Salaries		46,251.51	
Bonuses Paid	100.00		
Travel & Entertainment	2,667.85		
General Postage	209.60		
Advertising	7,970.36		
Rent	1,410.00		
Stationery & Office Expenses	1,554.30		
Meals	509.50		
Exchange Assessment & Dues	1,183.39		
Horse and Saddle	531.90		
Telephone & Telegraph	871.51		
Insurance	685.26		
Legal and Auditing	205.00		
Taxes	275.27		
Depreciation	615.99		
Errors and Adjustments	19.60		
Miscellaneous	680.19		
		19,489.72	
Total Operating Expenses			65,741.23
Net Operating Profit			12,801.65
Other Income:			
Miscellaneous			271.04
			13,072.69

Other Deductions:	
Miscellaneous	796.23
	$12,276.44

[fol. 474] Firm No. 9

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended

December 31, 1925

Exhibit D

Net Worth December 31, 1924		$38,234.87
Additions:		
Net Gain	$12,276.44	
Other	85.80	
		12,362.24
Total		50,597.11
Deductions:		
Expense appliable to 1924	26.35	
Loss on old Note	1,517.00	
Federal Income Tax	2,108.06	
		3,651.41
Net Worth December 31, 1925		$46,945.70

[fol. 475] Firm No. 9

South Omaha, Nebraska

Statement of Salaries Year Ended

December 31, 1925

Schedule 1

Owners' Salaries:			
# 1 Cattle Salesman	12 Mos.	$10,800.00	
# 2 " "	12 "	10,800.00	
Total Owners' Salaries			$21,600.00
Non-Owners' Salaries:			
# 3 Cattle Salesman	12 "	4,200.00	
# 4 Hog "	12 "	3,600.00	
# 5 Sheep "	12 "	2,100.00	
Total Salesmen			9,900.00
# 6 Cattle Feeder Buyer	2½ "	875.00	
# 7 " " "	6 "	2,400.00	
Total Feeder Buyers			3,275.00

# 8 Cattle Yardman	12	"	2,400.00	
# 9 " "	11	"	1,435.02	
#10 " "	4¼	"	400.39	
#11 Hog "	12	"	2,040.00	
Total Yardmen				6,275.41
#12 Bookkeeper	3⅓	"	682.01	
#13 "	8½	"	1,711.12	
#14 Stenographer	12	"	1,350.00	
#15 Clerk	3⅓	"	321.00	
#16 "	5½	"	566.67	
Total Office				4,630.80
Extra Help				570.30
Total Salaries				$46,251.51

[fol. 476] Firm No. 9

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars, Mixed Cars and Drive-Ins:		
Cattle & Calves	$42,069.49	
Hogs	27,472.59	
Sheep	1,405.96	
Total	70,948.04	
Dealers and Speculators Sales:		
Cattle & Calves	1,258.90	
Hogs	405.12	
Sheep	9.20	
Total	1,673.22	
Total Selling Commissions		$72,621.26

Buying

Straight Cars:		
Cattle & Calves	4,299.00	
Hogs	30.00	
Sheep	1,192.00	
Total	5,521.00	
Drive-Out and Truck-Out Sales:		
Cattle & Calves	44.50	
Sheep	21.80	
Total	66.30	
Total Buying Commissions		$5,587.30
Total Commissions (Selling & Buying)		$78,208.56

[fol. 477] Firm No. 9

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

	Cars	Head
Selling		
Straight Cars:		
Cattle & Calves	1,995	52,963
Hogs	1,496	109,622
Sheep	53	10,861
Total	3,544	173,446
Mixed Cars:		
Cattle & Calves, Hogs, Sheep	352	3,715 / 16,905 / 528
Total	352	21,148
Drive-Ins and Truck-Ins:		
Cattle	....	648
Calves	....	263
Hogs	....	3,077
Sheep	....	1,213
Total		5,201
Dealer and Speculator Sales:		
Cattle	....	3,037
Calves	....	54
Hogs	....	4,668
Sheep	....	73
Total		7,832
Total Selling	3,896	207,627
Buying		
Straight Cars:		
Cattle & Calves	283	9,633
Hogs	4	502
Sheep	67	16,609
Total	354	26,744
Drive-Out and Truck-Out Sales:		
Cattle & Calves	....	80
Sheep	....	109
Total	....	189
Total Buying	354	26,933
Total Volume	4,250	234,560

[fol. 478] Ex. 16

Auditor's Report, Year Ended December 31, 1925

Firm No. 10

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$50.00		
Cash in Bank	14,972.26		
		$15,022.26	
Accounts Receivable Other		590.79	
Total Current Assets			$15,613.05
Fixed:			
Office & Operating Equipment			195.00
Total Assets			$15,808.05

Liabilities and Net Worth

Current:			
Accounts Payable:			
Yard Co.	$795.95		
Other	4,967.05		
		5,763.00	
Total Current Liabilities			5,763.00
Net Worth:			
Capital			10,045.05
Total Liabilities and Net Worth			$15,808.05

[fol. 479] Firm No. 10

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$50.00		
Cash in Bank	17,022.44		
		$17,072.44	
Accounts Receivable Other		344.64	
Total Current Assets			$17,417.08

Fixed:			
Office & Operating Equipment	195.00		
Less: Depreciation	100.00		
Total Fixed Assets		95.00	
Total Assets			$17,512.08
Liabilities and Net Worth			
Current:			
Accounts Payable:			
Yard Co.	$868.35		
Other	5,559.80		
Total Current Liabilities		$6,428.15	
Net Worth:			
Capital		11,083.93	
Total Liabilities and Net Worth			$17, 512.08

[fol. 480] Firm No. 10

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$19,894.54	
Buying Commission		1,420.75	
			$21,315.29
Less: Deduction (Selling)			.75
Total Operating Income			21,314.54
Expenses:			
Owners' Salaries:			
Salesmen		3,300.00	
Non-Owners' Salaries:			
Salesmen	$3,000.00		
Yardmen	1,500.00		
		4,500.00	
Total Salaries		7,800.00	
Bonuses	3,900.00		
Split Commissions	79.50		
Travel & Entertainment	206.15		
Advertising	2,051.98		
Rent	300.00		
Telephone & Telegraph	265.85		
Stationery & Office Expense	40.30		
General Postage	52.00		
Charity	81.00		
Bond Premium	35.00		
Taxes	20.93		

Exchange Assessments & Dues	325.54		
Meals	272.35		
Depreciation	100.00		
Errors & Adjustments	1.18		
Miscellaneous	112.56		
		7,844.34	
Total Operating Expense			15,644.34
Net Operating Profit			5,670.20
Other Deductions:			
Miscellaneous			92.00
Net Gain			$5,578.20

[fol. 481] Firm No. 10

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924	$10,045.05
Additions:	
Net Gain	5,578.20
	15,623.25
Deductions:	
Withdrawals	4,539.32
Net Worth, December 31, 1925	$11,083.93

[fol. 482] Firm No. 10

South Omaha, Nebraska

Salary Statement for Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:				
#1 Cattle Salesmen	12 Mo.		$1,800.00	
#2 Hog Salesman	11 Mo.		1,375.00	
Owner Salesmen			3,175.00	
#3 Office (Est.)	1 Mo.		125.00	
Total Owners' Salaries				$3,300.00
Non-Owners' Salaries:				
#4 Cattle Salesman	12 Mo.		1,500.00	
*#5 Cattle Salesman (Est.)	12 Mo.		1,500.00	
Non-Owner Salesmen			3,000.00	
#6 Yardman	12 Mo.		1,500.00	
Total Non-Owner Salaries				4,500.00
Total Salaries				$7,800.00

* One-half time yardman—general.

[fol. 483] Firm No. 10

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars by Rail:			
Cattle & Calves	$14,860.91		
Hogs	1,406.90		
Mixed Cars by Rail:		788.17	
Total Straight Cars		$16,267.81	
Drive-Ins and Truck-Ins (Cattle $841.76):			
Cattle & Calves	925.30		
Hogs	516.22		
Sheep	10.45		
Total Drive-ins		1,451.97	
Speculator Yard Sales:			
Cattle & Calves	1,356.35		
Hogs	30.24		
Total Speculator		1,386.59	
Total Commissions Selling			$19,894.54

Buying

Straight Cars for Rail:			
Cattle	1,238.00		
Sheep	148.00		
Total Straight Cars		1,386.00	
Drive-Outs and Truck-Outs:			
Cattle & Calves		34.75	
Total Commissions Buying			1,420.75
Total Commissions			$21,315.29

[fol. 484] Firm No. 10

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	Single	Double	No. Head
Straight Cars by Rail:			
Cattle & Calves	829	...	21,923
Hogs	89	1	7,094
Total Straight Cars	918	1	29,017

	No. Cars		
	Single	Double	No. Head
Mixed Cars by Rail:			
Cattle & Calves	39	...	574
Hogs			1,503
Sheep			4
Total Mixed Cars.....	39	...	2,081
Drive-Ins & Truck-Ins:			
Cattle & Calves (Cattle 1,104).....	...	...	1,301
Hogs	...	...	1,794
Sheep	...	...	45
Total Drive-Ins.....	...	...	3,140
Speculator Yard Sales:			
Cattle & Calves	...	...	2,282
Hogs	...	...	134
Total Speculators.....	...	...	2,416
Grand Total Selling	957	1	36,654
Buying			
Straight Cars for Rail:			
Cattle & Calves	80	...	2,498
Sheep	2	6	1,624
Total Straight Cars	82	6	4,122
Drive-Outs and Truck-Outs:			
Cattle	...	...	45
Grand Total Buying	82	6	4,167
Total Volume	1,039	7	40,821

[fol. 485] Ex. 17

Auditor's Report Year Ended December 31, 1925

Firm No. 11

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash in Bank (General Account)...	$2,188.87	
Liberty Bonds	392.45	
Accounts Receivable	29,227.51	
Total Current Assets		$31,808.83

Fixed:			
Memberships	11,500.00		
Office & Operating Equipment	600.00		
Total Fixed Assets		12,100.00	
Deferred (Yard Co.)		49.63	
Total Assets			$43,958.46

Liabilities and Net Worth

Current:			
Bank Overdraft (Shippers Proceeds Account)	3.59		
Accounts Payable (Other)	1,694.77		
Notes Payable	18,263.25		
Notes Receivable Discounted	4,475.00		
Total Current Liabilities		24,436.61	
Reserves		10,948.11	
Net Worth:			
Capital		8,573.74	
Total Liabilities and Net Worth			$43,958.46

[fol. 486] Firm No. 11

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank (General Acct.)	$2,679.71		
Cash in Bank (Shippers Pro.)	11.38		
		$2,691.09	
Liberty Bonds		392.45	
Accounts Receivable		30,710.34	
Total Current Assets		$33,793.88	
Fixed:			
Memberships	11,500.00		
Office & Operating Equipment	600.00		
Total Fixed Assets		12,100.00	
Total Assets			$45,893.88

Liabilities and Net Worth

Current:			
Accounts Payable (Yard Co.)	34.04		
Accounts Payable (Other)	2,930.85		
		2,964.89	
Notes Payable		22,055.05	
Total Current Liabilities			25,019.04
Reserves			13,510.41
Net worth:			
Capital			7,363.53
Total Liabilities and Net Worth			$45,893.88

[fol. 487] Firm No. 11

South Omaha, Nebraska

Profit and Lost Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$13,514.17		
Buying Commission	390.15		
		$13,904.32	
Clearance Commission Received		557.10	
Miscellaneous Income (Locker Rent)		12.00	
Net Operating Income			$14,473.42
Expenses:			
Non-Owners' Salaries:			
Salesmen	1,500.00		
Office	38.00		
Extra Help	404.00		
Commission Paid as Salary	15.70		
Total Salaries		1,957.70	
Travel & Entertainment	881.99		
Advertising	767.73		
Rent	390.00		
Telephone & Telegraph	151.33		
Stationery & Office Expense	164.41		
General Postage	75.91		
Charity & Donations	22.98		
Insurance	109.83		
Taxes	4.62		
Bond Premiums	55.00		
Exchange Assessments & Dues	248.46		
Legal & Auditing	35.00		
Meals	1.00		

Errors & Adjustments	3.57		
Miscellaneous	78.02		
Total Operating Expense		2,989.85	
			4,947.55
Net Operating Profit			9,525.87
Other Deductions			1,167.48
Net Gain			$8,358.39

[fol. 488] Firm No. 11

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth as per books, December 31, 1924			$8,731.25
Adjustments:			
J. E. #1, Membership Rental Rec'd, Prior Period			150.00
Total			8,881.25
J. E. #2, Interest, Prior Period		$295.94	
J. E. #3, Loss on Errors, Prior Period		11.57	
			307.51
Adjusted Net Worth, December 31, 1924			8,573.74
Additions:			
Net Gain			8,358.39
Total			16,932.13
Deductions:			
Bad Debt Prior Period	$30.10		
Withdrawals	6,976.20		
Charged to Reserve	2,562.30		
		9,538.50	
			9,568.60
Net Worth, December 31, 1925			$7,363.53

[fol. 489] Firm No. 11

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Owners' Salaries: (None.)

Non-Owners' Salaries:

*#1, Cattle Salesman, 10 mos.	$1,500.00	
#2, Office, ½ Mo.	38.00	
Extra Cattle Yard Help	404.00	
Commission Paid as Salary (½ Sheep Com.)	15.70	
Total Non-Owners' Salaries		$1,957.70

*#1 Cattle Salesman—60% of time.
Office Man—25% of time.
Hog Yardman—15% of time.

[fol. 490] Firm No. 11

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling			
Straight Cars by Rail:			
Cattle & Calves	$7,937.09		
Hogs	3,090.37		
		$11,027.46	
Mixed Cars by Rail		1,724.15	
Drive-Ins and Truck-Ins:			
Cattle & Calves (Cattle $67.60)	84.30		
Hogs	260.16		
Sheep	.40		
		344.86	
Speculator & Dealer Sales:			
Cattle & Calves	410.70		
Hogs	7.00		
		417.70	
Total Selling Commissions			$13,514.17
Buying			
Straight Cars:			
Cattle & Calves	370.15		
Sheep	20.00		
		390.15	
Total Buying Commissions			390.15
Total Commissions (Selling & Buying)			$13,904.32

[fol. 491] Firm No. 11

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

	No. Cars	No. Head
Selling		
Straight Cars:		
Cattle & Calves	395	10,541
Hogs	211	15,833
Total	606	26,374
Mixed Cars:		
Cattle & Calves	88	958
Hogs		3,836
Sheep		52
Total	88	4,846

	No. Cars	No. Head
Yard Sales:		
Cattle & Calves	...	971
Hogs	...	84
Total	...	1,055
Drive-In and Truck-In Sales:		
Cattle	...	80
Calves	...	42
Hogs	...	925
Sheep	...	2
Total		1,058
Total Selling	694	33,333
Buying		
Straight Cars:		
Cattle & Calves	24	794
Sheep	1DD	304
Total Buying	25	1,098
Total Volume	719	34,431

[fol. 492] Ex. 18

Auditor's Report, Year Ended December 31, 1925

Firm No. 12

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$50.00		
Cash in Bank	1,170.93		
		$1,220.93	
Total Current Assets			$1,220.93
Fixed:			
Office & Operating Equipment		357.60	
Deferred		6.15	
Total Assets			$1,584.68

Liabilities and Net Worth

Current:			
Proceeds Payable (Held a/c Brand Inspection)		$7.49	
Net Worth:			
Capital	$1,200.00		
Undivided Profits	377.19		
Net Worth		1,577.19	
Total Liabilities and Net Worth			$1,584.68

[fol. 493]

Firm No. 12

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$75.00		
Cash in Bank (Gen'l Acct.)	224.49		
" " " (Shippers Acct.)	16.89		
	$316.38		
Accounts Receivable	121.57		
Total Current Assets		$437.95	
Fixed:			
Office & Operating Equipment		357.60	
Deferred		14.29	
Total Assets			$809.84

Liabilities and Net Worth

Current:			
Proceeds Payable (Held a/c Brand Insp.)	$139.99		
Accounts Payable (Other)	27.24		
Notes Payable	1,000.00		
Total Current Liabilities		$1,167.23	
Net Worth:			
Deficit		357.39	
Total Liabilities and Net Worth			$809.84

[fol. 404] Firm No. 12

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$17,279.32		
Buying Commissions	1,937.24		
		$19,216.56	
Split Commission Received		60.95	
Miscellaneous Income		65.60	
Total		19,342.51	
Less Deductions		.50	
Net Operating Income			$19,342.01
Expenses:			
Owners' Salaries:			
Salesmen	7,889.30		
Non-Owners' Salaries:			
Salesmen	$4,909.33		
Office	3,207.90		
Extra Help	88.00		
Commission Pd. as Salary	35.30		
	8,240.53		
Total Salaries		16,129.83	
Bonuses Paid	15.00		
Travel & Entertainment	1,172.37		
Advertising	559.31		
Rent	425.00		
Telephone & Telegraph	300.91		
Stationery & Office Expense	614.57		
General Postage	614.25		
Charity & Donations	70.00		
Horse & Saddle	16.50		
Insurance	192.09		
Taxes	.84		
Bond Premiums	15.00		
Exchange Assessment & Dues	322.77		
Legal & Auditing	75.00		
Meals	100.10		
Errors & Adjustments	51.51		
Miscellaneous	438.03		
		4,983.25	
Total Operating Expenses			21,113.08
Net Operating Loss			1,771.07
Other Deductions:			
Interest Paid			35.00
Net Loss			$1,806.07

[fol. 495] Firm No. 12

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$1,577.19
Deductions:		
Net Loss	$1,806.07	
Other	128.51	
Total		1,934.58
Deficit as at December 31, 1925		357.39

[fol. 496] Firm No. 12

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
#1 Cattle Salesman 12 Mos.		$3,932.15	
#2 " " 12 "		3,957.15	
Total Salesmen's Salaries			$7,889.30
Non-Owners' Salaries:			
#3 Cattle Salesman 12 Mos.	$2,621.45		
#5 Hog " 5 "	715.00		
#6 " " 12 "	1,572.87		
Total Salesmen		4,909.33	
#4 Office Bookkeeper	1,897.20		
#7 " Stenographer	1,310.70		
Total Office		3,207.90	
Extra Help:			
Cattle Yard	26.00		
Office	62.00		
Total Extra Help		88.00	
Commission Paid as Salary		35.30	
Total Non-Owners' Salaries			8,240.53
Total Salaries			$16,129.83

[fol. 497] Firm No. 12

South Omaha, Nebraska

Statement of Commissions Year Ened December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$11,720.13		
Hogs	2,794.20		
Sheep	28.00		
		$14,542.33	
Mixed Cars:		1,236.82	
Drive-Ins and Truck-Ins:			
Cattle	404.43		
Calves	13.60		
Hogs	649.85		
Sheep	21.20		
		1,089.08	
Dealer and Speculator Sales:			
Cattle & Calves	302.80		
Hogs	108.29		
		411.09	
Total Selling Commission			$17,279.32

Buying

Straight Cars:			
Cattle & Calves	1,845.46		
Sheep	24.00		
		1,869.46	
Drive-Outs and Truck-Outs:			
Cattle & Calves	63.00		
Hogs	4.78		
		67.78	
Total Buying Commissions			1,937.24
Total Commissions, Selling and Buying			$19,216.56

[fol. 498] Firm No. 12

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle & Calves	647	...	16,327
Hogs	190	2	13,344
Sheep	2	...	194
Total	839	2	29,865

	No. Cars S. D.	No. Cars D. D.	No. Head
Mixed Cars:			
Cattle & Calves	68	...	724
Hogs			2,608
Sheep			111
Total	68	...	3,443
Drive-In and Truck-In Sales:			
Cattle	...	...	518
Calves	...	...	34
Hogs	...	...	2,300
Sheep	...	...	106
Total	...	...	2,958
Dealer and Speculator Sales:			
Cattle & Calves	...	...	722
Hogs	...	...	878
Total	...	...	1,600
Total Selling	907	2	37,866
Buying			
Straight Cars:			
Cattle & Calves	120	...	3,589
Sheep	2	...	252
Total	122	...	3,841
Drive-Out and Truck-Out Purchases:			
Cattle & Calves	...	...	97
Hogs	...	...	26
Total	...	...	123
Total Buying	122	...	3,946
Total Volume	1,029	2	41,830

[fol. 499] Ex. 19

Auditor's Report, Year Ended December 31, 1925

Firm No. 13

South Omaha, Nebraska

Balance Sheet as at January 1, 1925

Exhibit A.

Assets		
Cash on hand	$200.00	
Proceeds Receivable	6,484.61	
Accounts Receivable	15,098.93	
Total Current Assets		$21,783.54

Fixed:			
Office and Operating Equipment.....	1,608.22		
Less Depreciation.....	163.49		
Total Fixed Assets.....		1,444.73	
Deferred:			
Yard Company		304.76	
Total Assets			$23,533.03

Liabilities and Net Worth

Current:			
Bank Overdraft.....	$5,693.00		
Accts. Payable—Yd. Co..... $3.84			
" " —Other 336.19			
	340.03		
Notes Payable	7,500.00		
Total Current Liabilities.....		$13,533.03	
Net Worth:			
Capital Stock	10,000.00		
Total Net Worth.....		10,000.00	
Total Liabilities and Net Worth.....			$23,533.03

[fol. 500] **Firm No. 13**

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand.....	$300.00		
Cash in Bank.....	4,358.10		
	$4,658.10		
Preceeds Receivable.....	3,890.50		
Accounts Receivable	10,945.43		
Notes Receivable	39,300.44		
Total Current Assets.....		$58,803.47	
Fixed:			
Office & Operating Equipment.....	2,637.80		
Less Depreciation	381.49		
Total Fixed Assets.....		2,256.31	
Total Assets			$61,059.78

Liabilities and Net Worth

Current:			
Proceeds Payable		$50.00	
Accounts Payable—Yard Co.	$3,336.81		
" " —Other	27,736.49		
		31,073.30	
Notes Payable		20,000.00	
Total Current Liabilities			$51,123.30
Deferred			1.90
Net Worth:			
Capital Stock		10,000.00	
Less Deficit		65.42	
Total Net Worth			9,934.58
Total Liabilities and Net Worth			$61,059.78

[fol. 501] Firm No. 13

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:				
Selling Commissions		$107,773.56		
Buying Commissions		9,959.35		
			$117,732.91	
Miscellaneous Income			416.25	
Gross Income			118,149.16	
Less Deductions			20.84	
Total Operating Income				$118,128.32
Expenses:				
Owners' Salaries:				
Salesmen	$19,200.00			
Office	5,250.00			
		24,450.00		
Non-Owners' Salaries:				
Salesmen	27,325.77			
Yardmen	10,676.00			
Office	3,815.00			
Extra Help	308.97			
Commission pd. as Salary	318.00			
		42,443.74		
Total Salaries			66,893.74	
Bonuses Paid			210.00	
Travel & Entertainment			5,314.36	
Advertising			9,479.31	
Rent			810.00	
Telephone & Telegraph			1,374.64	

General Postage	51.00	
Charity and Donations	280.95	
Horse and Saddle	545.00	
Insurance	1,235.19	
Taxes	74.71	
Bond Premium	54.00	
Exchange Assessment and Dues	1,542.19	
Legal and Auditing	343.05	
Stationery & Office Expenses	2,283.28	
Meals	525.20	
Membership Rental	920.00	
Depreciation	218.00	
Errors and Adjustments	26.15	
Unexplained	72.50	
Miscellaneous	1,141.27	
Total Operating Expenses		93,394.54
Net Operating Profit		24,733.78
Other Income:		
Miscellaneous		225.81
		24,959.59
Other Deductions:		
Miscellaneous		2,012.58
Net Gain		$22,947.01

[fol. 502] Firm No. 13

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth January 1, 1925	$10,000.00
Net Gain	22,947.01
	32,947.01
Deduct:	
Withdrawals	23,012.43
Net Worth December 31, 1925	$9,934.58

[fol. 503] Firm No. 13

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:					
			Mos.		
#1.	Cattle Salesman		12	$9,600.00	
#2.	"	"	12	9,600.00	
Total Salesmen Salaries					$19,200.00
Office:					
#3.	Manager		12	5,250.00	
Total Office Salaries					5,250.00
Total Owners' Salaries					$24,450.00

Non-Owners' Salaries:					
#4.	Cattle Salesman	12	2,525.00		
#5.	Cattle Salesman	12	3,150.00		
#5.	Cattle Salesman Bonus		4,602.49		
#6.	Hog Salesman	12	3,600.00		
#7.	Hog Salesman	10	3,000.00		
#8.	Sheep Salesman	12	5,499.96		
#8.	Sheep Salesman Bonus		3,068.32		
#9.	Sheep Salesman	12	1,880.00		
	Total Salesmen Salaries			27,325.77	
#10.	Cattle Yardman	12	2,100.00		
#11.	" "	10	1,850.00		
#12.	" "	3	480.00		
#13.	" "	9	933.50		
#14.	" "	6	1,050.00		
#15.	" "	5	875.00		
#16.	Hog "	10	2,050.00		
#17.	" "	2	350.00		
#18.	Sheep "	3	355.00		
#19.	" "	2	292.50		
#20.	" "	2	340.00		
	Total Yardmen Salaries			10,676.00	
Office:					
#21.	Stenographer	12	1,920.00		
#22.	"	3	410.00		
#23.	"	6	690.00		
#24.	"	5	795.00		
	Total Office Salaries			3,815.00	
Extra Help—Various				308.97	
Commission paid as Salary				318.00	
	Total Non-Owner Salaries				$42,443.74
	Total Salaries				$66,893.74

[fol. 504]

Firm No. 13

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves	$66,028.14		
Hogs	12,300.52		
Sheep	16,359.98		
		$94,688.64	
Mixed Cars:		4,466.99	
Drive-Ins and Truck-Ins:			
Cattle	1,941.45		
Calves	249.50		
Hogs	2,600.02		
Sheep	339.60		
		5,130.57	

Speculators and Dealers:

Cattle and Calves	2,787.16		
Hogs	464.62		
Sheep	218.30		
		3,470.08	
		107,756.28	
Add Unlocated Difference		17.28	
Total Selling Commissions			$107,773.56

Buying

Straight Cars:

Cattle and Calves	$2,861.20		
Sheep	6,833.00		
		$9,694.20	

Drive-Outs and Truck-Outs:

Cattle	71.25		
Calves	16.50		
Hogs	4.00		
Sheep	151.80		
		243.55	
		9,937.75	
Add Unlocated Difference		21.60	
Total Buying Commissions			$9,959.35

[fol. 505] Firm No. 13

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars D. D.	No. Cars S. D.	No. Head
Straight Cars:			
Cattle and Calves	...	3,573	92,345
Hogs	9	784	59,847
Sheep	713	117	193,599
	722	4,474	345,791
Mixed Cars:			
Cattle and Calves	...	228	2,956
Hogs			9,165
Sheep			1,045
		228	13,166
Drive-Ins and Truck-Ins:			
Cattle	...	...	2,409
Calves	...	...	620
Hogs	...	...	9,313
Sheep	...	...	1,798
			14,140

	No. Cars		
	D. D.	S. D.	No. Head
Speculators and Dealers:			
Cattle and Calves	...	...	6,842
Hogs	...	...	4,866
Sheep	...	...	3,122
			14,830
Total Selling	722	4,702	387,927

Buying

Straight Cars:			
Cattle and Calves	...	191	6,703
Sheep	306	44	104,306
	306	235	111,009
Drive-Outs and Truck-Outs:			
Cattle	...	...	161
Calves	...	...	26
Hogs	...	...	40
Sheep	...	...	993
			1,220
Total Buying	306	235	112,229

[fol. 506]

Exhibit 20

Auditor's Report Year Ending December 31, 1925

Firm No. 14

South Omaha, Nebraska

Balance Sheet as at December 31, 1924.

Exhibit A.

Assets

Current:			
Cash on hand	$264.02		
Cash in Bank	8,944.44		
Accounts Receivable	34,622.65		
Notes Receivable	9,245.05		
Total Current Assets		$53,076.16	
Total Assets			$53,076.16

Liabilities and Net Worth

Current:			
Proceeds Payable	$254.37		
Accounts Payable	1,087.72		
Total Current Liabilities		$1,342.09	
Net Worth:			
Proprietor's Investment	51,734.07		
Total Net Worth		51,734.07	
Total Liabilities and Net Worth			$53,076.16

[fol. 507] Firm No. 14

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on hand	$539.37		
Cash in Bank (General)	16,074.21		
" " " (Proceeds Acct.)	1,000.00		
Proceeds Receivable	178.47		
Accounts Receivable	36,644.84		
Notes Receivable	8,445.05		
Total Current Assets		$62,881.94	
Total Assets			$62,881.94

Liabilities and Net Worth

Current:			
Proceeds Payable (Held a/c Brands)	$1,547.07		
" " (Other)	378.38		
Accounts Payable (Yard) $1,170.42			
" " (Other) 378.38			
	4,023.83		
Total Current Liabilities		$5,949.28	
Net Worth:			
Capital (Proprietor's Investment)	56,923.66		
Total Net Worth		56,932.66	
Total Liabilities and Net Worth			$62,881.94

[fol. 508] Firm No. 14

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commissions	$43,354.06	
Buying Commissions	1,188.15	
Clearance Commissions Rec'd	679.01	
Total Operating Income		$45,221.22

Expenses:			
Owners' Salaries:			
Salesman		3,600.00	
Non-Owners' Salaries:			
Salesmen	$19,496.81		
Yardmen	2,112.50		
Office	2,650.00		
Extra Help	390.50		
Commission paid as salary	156.45		
		24,806.26	
Total Salaries		28,406.26	
Travel and Entertainment		3,372.34	
Advertising		1,936.90	
Rent		420.00	
Telephone & Telegraph		453.86	
Stationery & Office Expense		379.99	
General Postage		810.48	
Charity and Donations		103.00	
Insurance		307.78	
Taxes		44.83	
Bond Premium		85.00	
Exchange Assessment and Dues		677.12	
Legal and Auditing		212.29	
Miscellaneous		141.95	
Total Operating Expenses			37,351.80
Net Operating Profit			7,869.42
Other Deductions			517.30
Net Gain			$7,352.12

[fol. 509] Firm No. 14

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$51,734.07	
Additions:			
Net Gain	$7,352.12		
Office Rent Paid in 1924	35.00		
		7,387.12	
			$59,121.19
Deductions:			
Withdrawals of Capital		1,854.79	
1924—Federal Tax Paid		333.74	
			2,188.53
Net Worth December 31, 1925			$56,932.66

[fol. 510] Firm No. 14

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners:				
#1. Cattle Salesman	Full time	$3,600.00		
Non-Owners:				
#2. Cattle Salesman	" "	3,180.00		
#3. " "	" "	3,742.55		
#4. " "	" "	6,757.48		
#5. Hog "	" "	5,816.78		
Total Salesmen				19,496.81
*#6. Yardman	" "	1,800.00		
**#7. "	5 Mos.	312.50		
Total Yardmen				2,112.50
#8. Office	2 Mos.	250.00		
#9. "	Full time	2,400.00		
Total Office				2,650.00
Extra Help				390.50
Commission paid as salary				156.45
Total Salaries				$28,406.26

* Hogs—2/3—Cattle 1/3 Time.
** Hogs—2/3—Cattle 1/3 Time.

[fol. 511] Firm No. 14

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling		
Straight Cars:			
Cattle & Calves	$23,496.61		
Hogs	12,233.88		
Sheep	160.10		
		$35,800.59	
Mixed Cars		2,422.89	
Drive-Ins and Truck-Ins:			
Cattle	191.40		
Calves	70.40		
Hogs	802.65		
Sheep	39.80		
		1,104.25	
Dealers and Speculators:			
Cattle	2,312.99		
Hogs	1,633.32		
		3,946.31	
Total		43,364.04	
Less Unlocated Difference		9.98	
Total Selling Commissions			$43,354.06

Buying

Straight Cars:			
Cattle	780.81		
Hogs	400.00		
		1,180.81	
Drive-Outs and Truck-Outs:			
Cattle	1.00		
Calves	6.40		
		7.40	
		1,188.21	
Less Unlocated Difference		.06	
Total Buying Commissions			$1,188.15

[fol. 512]

Firm No. 14

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head.
Straight Cars:			
Cattle & Calves	1,198	....	34,801
Hogs	853	4	59,018
Sheep	5	4	1,603
	2,056	8	95,422
Mixed Cars:			
Cattle, Hogs, Sheep	128	....	1,729 / 4,912 / 228
	128	....	6,869
Drive-Ins and Truck-Ins:			
Cattle	....	....	240
Calves	....	....	176
Hogs	....	....	2,872
Sheep	....	....	199
	....	....	3,487
Dealers and Speculators:			
Cattle	....	....	4,567
Hogs	....	....	16,897
	....	....	21,464
Total Selling	2,184	8	127,242

Buying

Straight Cars:			
Cattle & Calves	48	....	1,632
Hogs	50	....	4,201
	98	....	5,833
Drive-Outs and Truck-Outs:			
Cattle	....	....	1
Calves	....	....	16
	....	....	17
Total Buying	98	....	5,850

[fol. 513] Ex. 21

Auditor's Report Year Ended December 31, 1925

Firm No. 15

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank	$4,370.89		
Accounts Receivable	1,398.82		
Liberty Bonds	1,000.00		
Total Current Assets		$6,769.71	
Fixed:			
Membership	5,000.00		
Office & Operating Equipment	1,000.00		
Total Fixed Assets		6,000.00	
Total Current Assets			$12,769.71

Liabilities and Net Worth

Current:			
Bank Overdraft	$1,394.33		
Accounts Payable (Other)	2,206.31		
Total Current Liabilities		$3,600.64	
Net Worth:			
Capital	8,000.00		
Undivided Profits	1,169.07		
Total Net Worth		9,169.07	
Total Liabilities and Net Worth			$12,769.71

[fol. 514] Firm No. 15

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank—Proceeds	$1,132.76		
Accounts Receivable	2,331.76		
Notes Receivable	3,324.39		
Liberty Bonds	1,000.00		
Total Current Assets		$7,788.91	
Fixed:			
Memberships	5,000.00		
Office & Operating Equipment	1,000.00		
Total Fixed Assets		6,000.00	
Deferred		24.90	
Total Assets			$13,813.81

Liabilities and Net Worth

Current:			
Bank Overdraft	$851.21		
Accounts Payable (Yard Co.)	26.56		
" " (Other)	644.29		
Total Current Liabilities		1,522.06	
Net Worth:			
Capital	8,000.00		
Undivided Profits	4,291.75		
Total Net Worth		12,291.75	
Total Liabilities and Net Worth			$13,813.81

[fol. 515] Firm No. 15

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$16,902.51		
Buying Commissions	914.80		
		$17,817.31	
Miscellaneous Income		47.35	
Gross Income		17,864.66	
Less Deductions		3.00	
Total Operating Income			$17,861.66

Expenses:			
Owners' Salaries:			
Salesmen		1,800.00	
Non-Owners' Salaries:			
Salesmen	$6,300.00		
Yardmen	1,525.00		
Office	1,525.00		
Extra Help	44.00		
Commission paid as Salary	33.00		
		9,427.00	
Total Salaries			11,227.00
Travel and Entertainment		90.00	
Advertising		912.31	
Rent		300.00	
Telephone & Telegraph		295.69	
Stationery & Office Expense		269.44	
General Postage		136.93	
Charity and Donations		25.00	
Bond Premiums		99.27	
Exchange Assessments & Dues		334.51	
Errors and Adjustments		6.00	
Miscellaneous		63.10	
			2,622.25
Total Operating Expenses			13,849.25
Net Operating Profit			4,012.41
Other Income			257.96
Total			4,270.37
Other Deductions			184.52
Net Gain			$4,085.85

[fol. 516] Firm No. 15

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$9,169.07
Additions:		
Net Gain	$4,085.85	
Additional Investment	3,625.61	
Total Additions		7,711.46
Total		16,880.53
Deductions:		
Withdrawals	3,974.51	
Other	614.27	
		4,588.78
Net Worth December 31, 1925		$12,291.75

[fol. 517] Firm No. 15

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owner's Salaries					
#1	Cattle Salesmen	12 Mos.			$1,800.00
Non-Owners' Salaries					
#2	Cattle Salesman	12 "	$2,400.00		
#3	" "	12 "	1,800.00		
#4	Hog "	12 "	2,100.00		
	Total Salesmen			$6,300.00	
#5	Yardmen	9 "	1,350.00		
#6	"	1 "	175.00		
	Total Yardmen			1,525.00	
#7	Office	12 "		1,525.00	
	Extra Help			44.00	
	Commission Paid as Salary			33.00	
					9,427.00
	Total Salaries				$11,227.00

[fol. 518] Firm No. 15

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling		
Straight Cars			
Cattle & Calves	$7,299.33		
Hogs	5,471.11		
Sheep	17.44		
		$12,787.88	
Mixed Cars		2,133.15	
Drive-Ins and Truck-Ins			
Cattle	214.29		
Calves	74.00		
Hogs	475.30		
Sheep	19.14		
		782.73	
Speculator—Yard Sales			
Cattle & Calves	752.51		
Hogs	327.60		
		1,080.11	
Add Unlocated Difference		118.64	
Total Selling Commissions			$16,902.51

Buying

Straight Cars		
Cattle & Calves	$845.84	
Hogs	58.00	
Sheep	40.00	
		$943.84
Mixed Cars		18.75
Drive-Outs and Truck-Outs		
Cattle	17.25	
Calves	7.40	
Hogs	3.00	
		27.65
		990.24
Less Unlocated Difference		75.44
Total Buying Commissions		$914.80

[fol. 519] **Firm No. 15**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	409	..	9,937
Hogs	349	13	26,883
Sheep	1	..	99
	759	13	36,919
Mixed Cars:			
Cattle & Calves / Hogs / Sheep	117	..	1,163 / 5,489 / 75
	117	..	6,727
Drive-Ins and Truck-Ins:			
Cattle	...	..	270
Calves	...	..	187
Hogs	...	..	1,762
Sheep	...	..	96
	...	..	2,315
Speculator—Yard Sales:			
Cattle & Calves	...	..	1,775
Hogs	...	..	3,334
	...	..	5,109
Total Selling	876	13	51,070

Buying

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	55	..	1,832
Hogs	3	1	566
Sheep	...	2	598
	58	3	2,996
Mixed Cars:			
Cattle & Calves / Hogs	1	..	19 / 51
	1	..	70
Drive-Outs and Truck-Outs:			
Cattle	...	..	23
Calves	...	..	20
Hogs	...	..	15
	...	..	58
Total Buying	59	3	3,8124

[fol. 520] Ex. 22

Auditor's Report Year Ended December 31, 1925

Firm No. 16

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

Current:			
Cash on Hand	695.23		
Cash in Bank	804.77		
		1,500.00	
Total Current Assets			1,500.00
Fixed:			
Office & Operating Equipment		500.00	
Total Fixed Assets			500.00
Goodwill			2,500.00
Total Assets			$4,500.00

Liabilities and Net Worth

Net Worth:	
Capital	$4,500.00

[fol. 521] Firm No. 16

South Omaha, Nebraska

Assets

Exhibit B.

Balance Sheet as at December 31, 1925

Current:			
Cash on Hand	$ 464.00		
Cash in Bank	1,036.00		
		1,500.00	
Total Current Assets			1,500.00
Fixed:			
Office & Operating Equipment		500.00	
Total Fixed Assets			500.00
Goodwill			2,500.00
Total Assets			$4,500.00
Liabilities and Net Worth:			
Capital			$4,500.00

[fol. 522] Firm No. 16

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C

Income:			
Selling Commissions	$6.669.63		
Buying Commissions	120.00		
		$6,789.63	
Miscellaneous Income		408.00	
Total Operating Income			$7,197.63
Expenses:			
Non-Owners' Salaries:			
Yardmen	$1,325.00		
Com. Pand as Salaries	3.20		
		1,328.20	
Total Salaries			1,328.20
Advertising		306.81	
Rent		570.00	
Telephone & Telegraph		96.69	

Stationery & Office Expense	63.82		
General Postage	40.06		
Charity & Donations	2.00		
Insurance	18.00		
Taxes	6.31		
Bond Premiums	35.00		
Exchange Assessments & Dues	166.44		
Errors & Adjustments	1.37		
Miscellaneous	39.09		
		1,345.59	
Total Operating Expense			2,673.79
Neet Gain			4,523.84

[fol. 523] Firm No. 16

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D

Net Worth, December 31, 1924	$4,500.00
Additions:	
Net Gain	4,523.84
Total	9,023.84
Deductions:	
Other	4,523.84
Net Worth, December 31, 1925	$4,500.00

[fol. 524] Firm No. 16

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1

Non-Owners' Salaries:

#1 Yardman—various	12 Mos.	$1,325.00	
#2 Commissions Paid as Salaries		3.20	
Total Salaries			$1,328.20

[fol. 525] Firm No. 16

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars:			
Cattle and Calves	$1,625.75		
Hogs	3,291.75		
		$4,917.50	
Mixed Cars		437.35	
Drive-Ins and Truck-Ins:			
Cattle	556.80		
Calves	38.40		
Hogs	546.34		
Sheep	1.00		
		1,142.54	
Speculator and Yard Sales:			
Cattle	146.00		
Hogs	26.24		
		172.24	
Total Selling			$6,669.63

Buying

Straight Cars:		
Cattle and Calves	$120.00	
Total Buying		$120.00

[fol. 526] Firm No. 16

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	SD	DD	Head
Straight Cars:			
Cattle & Calves	85	..	2,140
Hogs	228	1	16,394
	313	1	18,534

	Cars SD	Cars DD	Head
Mixed Cars:			
Cattle		..	194
Calves		..	52
Hogs	24	..	909
Sheep		..	24
	24	..	1,269
Drive-Ins and Truck-Ins:			
Cattle	..	..	696
Calves	..	..	96
Hogs	..	..	1,984
Sheep	..	..	5
	..	..	2,781
Speculator and Yard Sales:			
Cattle	..	..	365
Hogs	..	..	187
	..	..	552
Total Selling	337	1	23,136
Buying			
Straight Cars:			
Cattle	8	..	287
Total Buying	8	..	287

[fol. 527]

EXHIBIT 23

Auditor's Report Nine Months Ended December 31, 1925

Firm No. 17

South Omaha, Nebraska

Balance Sheet as at April 1, 1925

Exhibit A.

Assets			
Current:			
Cash in Bank	$2,000.00		
Total Current Assets		2,000.00	
Total Assets			$2,000.00
Liabilities and Net Worth			
Net Worth:			
Capital	$2,000.00		
Total Net Worth		$2,000.00	
Total Liabilities			$2,000.00

[fol. 528] Firm No. 17

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B

Assets

Current:			
Cash in Bank	$4,659.53		
Total Current Assets		$4,659.53	
Fixed:			
Office and Operating Equipment	746.12		
Total Fixed Assets		746.12	
Total Assets			$5,405.65

Liabilities and Net Worth

Current:			
Accounts Payable (Yard)	1,461.50		
Accounts Payable (Other)	100.72		
Total Current Liabilities		1,562.22	
Net Worth:			
Capital	2,710.00		
Surplus	1,133.43		
Total Net Worth		3,843.43	
Total Liabilities			$5,405.65

[fol. 529] Firm No. 17

South Omaha, Nebraska

Profit and Loss Statement for 9 Months Ended December 31, 1925

Exhibit C

Income:			
Selling Commissions	$8,415.44		
Buying Commissions	688.25		
Total Operating Income			$9,103.69
Expenses:			
Non-Owners' Salaries:			
Office	1,100.00		
Extra Help	53.48		
Commission Paid as Salary	356.98		
Total Salaries		$1,510.46	

Travel & Entertainment	258.55	
Advertising	741.16	
Rent	380.00	
Telephone & Telegraph	61.02	
Stationery & Office Expense	13.05	
General Postage	10.00	
Charity & Donations	5.00	
Horse & Saddle	67.07	
Insurance	85.00	
Exchange Assessments & Dues	150.89	
Depreciation	98.88	
Errors & Adjustments	19.70	
Miscellaneoues	63.03	
Total Operating Expenses		3,733.81
Net Operating Profit		5,369.88
Other Deductions:		
Interest on Personal Note of Owner		111.45
Net Gain		$5,258.43

[fol. 530] Firm No. 17

South Omaha, Nebraska

Reconciliation of Net Worth 9 Months Ended December 31, 1925

Exhibit D.

Net Worth, April 1, 1925		$2,000.00
Additions:		
Net Gain	$5,258.43	
Addition to Capital	710.00	
		5,968.43
Total		7,968.43
Deductions:		
Withdrawals		4,125.00
Net Worth, December 31, 1925		$3,843.43

[fol. 531] Firm No. 17

South Omaha, Nebraska

Statement of Salaries 9 Months Ended December 31, 1925

Schedule 1.

Non-Owners' Salaries:		
#1. Office Bookkeeper—1 Mo.	$100.00	
#2. Office Bookkeeper—8 "	900.00	
#3. Office Bookkeeper—Part time	100.00	
		$1,100.00
Extra Help		53.48
Commissions Paid as Salaries		356.98
Total Salaries		$1,510.46

[fol. 532] Firm No. 17

South Omaha, Nebraska

Statement of Commissions Nine Months Ended December 31, 1925

Schedule 2.

Selling			
Straight Cars:			
Cattle and Calves	$5,960.95		
Hogs	577.68		
		$6,538.63	
Mixed Cars		377.63	
Drive-Ins and Truck-Ins:			
Cattle	90.65		
Calves	23.63		
Hogs	103.82		
Sheep	9.80		
		227.90	
Dealer and Speculator Sales:			
Cattle	1,267.20		
Calves	3.80		
Hogs	.28		
		1,271.28	
Total Selling Commission			$8,415.44
Buying			
Straight Cars:			
Cattle & Calves	677.25		
		677.25	
Drive-Outs:			
Hogs		11.00	
Total Buying Commission			688.25
Total Commissions			$9,103.69

[fol. 533] Firm No. 17

South Omaha, Nebraska

Statement of Volume Nine Months Ended December 31, 1925

Schedule 3.

	Cars	Head
Selling		
Straight Cars:		
Cattle & Calves	306	8,419
Hogs	40	2,643
Total	346	11,062

Mixed Cars:

	Cars	Head
Cattle	20	277
Calves		7
Hogs		719
Total	20	1,003

Drive-In and Truck-In Sales:

Cattle	...	118
Calves	...	70
Hogs	...	365
Sheep	...	49
Total	...	602

Dealer and Speculator Sales:

Cattle	...	3,159
Calves	...	14
Hogs	...	1
Total	...	3,174
Total Selling	366	15,841

Buying

Straight Cars:

Cattle & Calves	44	1,500

Drive-Out:

Hogs	...	53
Total Buying	44	1,555
Total Volume	410	17,396

[fol. 534] EXHIBIT 24

Auditor's Report Year Ended December 31, 1925.

Firm No. 18

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:

Cash on hand	$342.87	
Cash in Bank (General)	352.83	
Cash in Bank (Shippers Proceeds)	7,000.00	
	$7,695.70	
Proceeds Receivable	35,085.63	
Accounts Receivable	2,861.96	
Total Current Assets		$45,643.29

Deferred:		
Postage on hand	8.36	
Total Assets		$45,651.65

Liabilities and Net Worth

Current:		
Accounts Payable	$4,496.04	
Estray Account	558.62	
Total Current Liabilities		$5,054.66
Net Worth:		
Branch House Account	40,596.99	
Total Liabilities and Net Worth		$45,651.65

[fol. 535] **Firm No. 18**

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash on Hand	$278.15	
Cash in Bank (General)	463.33	
Cash in Bank (Shippers Proceeds)	8,811.96	
	$9,533.44	
Proceeds Receivable	10,410.36	
Accounts Receivable	7,894.39	
Total Current Assets		$27,858.19
Deferred:		
Postage on Hand	43.75	
Total Assets		$27,901.94

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co.	$2,321.42	
Accounts Payable (Other)	14,516.28	
Estray	328.38	
Total Current Liabilities		$17,166.08
Net Worth:		
Branch House Account	10,735.86	
Total Liabilities and Net Worth		$27,901.94

[fol. 536] Firm No. 18

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$103,187.36		
Buying Commission	12,413.75		
Split Commission			
Gross Income		$115,601.11	
Less Deductions		61.65	
Total Operating Income			$115,539.46
Expense:			
Non-Owners' Salaries:			
Salesmen	23,700.00		
Buyers	8,900.00		
Solicitors	1,200.00		
Yardmen	11,692.75		
Office	17,602.50		
Extra Help	423.02		
Total Salaries		63,518.27	
Bonuses Paid		390.00	
Advertising		21,138.93	
Rent		3,300.00	
Travel & Entertainment		5,896.58	
Stationery & Office Expense		2,271.32	
Bonds		185.50	
Exchange Assessments & Dues		1,520.75	
General Postage		737.93	
Telephone & Telegraph		1,754.19	
Meals		405.65	
Legal		50.00	
Insurance		215.26	
Taxes		156.11	
Charity and Donations		639.42	
Miscellaneous		836.42	
Total Operating Expense			103,016.33
Net Operating Profit			12,523.13
Other Income:			
Other			71.00
			12,594.13
Other Deductions:			
Miscellaneous			836.04
Net Gain			$11,758.09

[fol. 537] Firm No. 18

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$40,596.99
Additions:		
Net Gain		11,758.09
		52,355.08
Deduct:		
Uncollectable Note Receivable	$4,300.43	
Advances to Head Office	36,066.91	
Operating Equipment Charged to Expense	1,251.88	
		41,619.22
Net Worth December 31, 1925		$10,735.86

[fol. 538] Firm No. 18

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Non-Owner:				
Salesmen:				
$1.	Cattle	Full time	$7,500.00	
$2.	"	" "	5,000.00	
$3.	"	" "	2,100.00	
$4.	Hog	" "	3,600.00	
$5.	Sheep	" "	5,500.00	
Total Salesmen Salaries				$23,700.00
Buyers:				
$6.	Cattle	" "	2,400.00	
$7.	"	" "	2,300.00	
$8.	Sheep	" "	4,200.00	
Total Buyers Salaries				8,900.00
Solicitors:				
$9.		6 Months		1,200.00
Yardmen:				
$10.	Cattle	Full time	2,100.00	
$11.	"	" "	1,500.00	
$12.	"	" "	1,200.00	
$13.	Hog	" "	1,850.00	
$14.	"	2½ Mos.	437.50	
$15.	Sheep	Full time	2,700.00	
$16.	"	" "	1,905.25	
Total Yardmen Salaries				11,692.75

Office:

#17.	Full time.....	3,500.00	
#18.	" "	2,700.00	
#19.	" "	2,100.00	
#20.	" "	1,020.00	
#21.	" "	1,080.00	
#22.	" "	1,800.00	
#23.	" "	960.00	
#24.	" "	1,080.00	
#25.	" "	1,080.00	
#26.	8½ Mos.....	680.00	
#27.	6 Mos.	462.50	
#28.	7 "	700.00	
#29.	4 "	440.00	
	Total Office Salaries		17,602.50

Extra Help:

Office	Various	367.50	
Yards		55.52	
	Total Extra Help		423.02
	Total Salaries		$63,518.27

[fol. 539] Firm No. 18

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars, Mixed Cars and Drive-Ins:

Cattle & Calves	$48,197.67	
Hogs	17,243.19	
Sheep	35,462.28	
		$100,903.14

Speculator—Yard Sales:

Cattle & Calves	$2,001.80	
Hogs	147.72	
Sheep	134.70	
		2,284.22
Total Selling Commissions		$103,187.36

Buying

Straight Cars and Drive-Outs:

Cattle & Calves	4,834.90	
Hogs	40.00	
Sheep	7,538.85	
Total Buying Commissions.....		$12,413.75

[fol. 540] Firm No. 18

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	2,460	....	66,047
Hogs	892	34	68,018
Sheep	73	1,670	429,026
	3,425	1,704	563,091
Mixed Cars:			
Cattle & Calves Hogs Sheep	190	....	1,954 7,490 1,173
	190	....	10,617
Drive-Ins and Truck-Ins:			
Cattle	.....	....	861
Calves	.....	....	259
Hogs	.....	....	6,365
Sheep	.....	....	5,753
	.....	....	13,238
Dealers and Speculators:			
Cattle and Calves	.....	....	4,958
Hogs	.....	....	1,692
Sheep	.....	....	3,145
	.....	....	9,795
Total Selling	3,615	1,704	596,741

Buying

Straight Cars:			
Cattle & Calves	312	....	10,881
Hogs	3	....	563
Sheep	63	314	100,908
	378	314	112,352
Drive-Outs and Truck-Outs:			
Cattle	.....	....	84
Sheep	.....	....	4,883
	.....	....	4,967
Total Buying	378	314	117,319

fol. 541] Exhibit 25

Auditor's Report Year Ended December 31, 1925

Firm No. 19

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank—General	$2,788.20		
Proceeds Receivable	2,801.62		
Accounts Receivable	2,772.90		
Notes Receivable	2,053.85		
Miscellaneous	7.79		
Total Current Assets		$10,424.36	
Fixed:			
Office & Operating Equipment	1,444.55		
Total Fixed Assets		1,144.55	
Deferred		3.11	
Total Assets			$11,572.02

Liabilities and Net Worth

Current:			
Bank Overdraft—Proceeds	$2,727.27		
Proceeds Payable	862.28		
Accounts Payable—Yard Co	961.42		
Accounts Payable—Other	2,332.70		
Total Current Liabilities		$6,883.67	
Net Worth:			
Capital	4,688.35		
Total Net Worth		4,688.35	
Total Liabilities and Net Worth			$11,572.02

[fol. 542] Firm No. 19

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank—General	$770.04		
Proceeds Receivable	2,741.74		
Accounts Receivable	3,115.01		
Notes Receivable	2,053.85		
Miscellaneous	353.31		
Total Current Assets		$9,033.95	

Fixed:			
Office and Operating Equipment ...	1,144.55		
Total Fixed Assets		1,144.55	
Deferred		62.20	
Total Assets			$10,240.70
Liabilities and Net Worth			
Current:			
Bank Overdraft—Proceeds	$3,011.16		
Proceeds Payable	1,086.40		
Accounts Payable—Other	80.87		
Total Current Liabilities		$4,178.43	
Net Worth:			
Capital	6,062.27		
Total Net Worth		6,062.27	
Total Liabilities and Net Worth			$10,240.70

[fol. 543] Firm No. 19

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$30,306.76		
Buying Commission	1,253.80		
Gross Income		$31,560.56	
Less: Deductions		19.80	
Total Operating Income			$31,540.76
Expenses:			
Owners Salaries:			
Salesmen		11,400.00	
Non-Owners Salaries:			
Salesmen	$7,210.00		
Yardmen	2,281.70		
Office	1,920.00		
Extra Help	420.17		
		11,831.87	
Total Salaries		23,231.87	
Split Commission Paid		55.40	
Travel & Entertainment		1,625.32	
Advertising		1,798.75	
Rent		780.00	
Telephone & Telegraph		346.53	
Stationery & Office Expense		568.10	

General Postage	640.02		
Charity & Donations	28.00		
Horse & Saddle	109.00		
Insurance	163.00		
Taxes	18.50		
Bond Premiums	64.00		
Exchange Assessments & Dues	327.85		
Legal & Auditing	35.00		
Meals	368.30		
Miscellaneous	133.22		
		7,060.99	
Total Operating Expense			$30,292.86
Net Operating Profit			1,247.90
Other Income:			
Interest			40.29
Net Gain			$1,288.19

[fol. 544] Firm No. 19

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$4,688.35
Additions:		
Net Gain	$1,288.19	
Salaries Credited to Partners	11,400.00	
Other Additional Investments	3,986.69	
Total Additions		16,674.88
		21,363.23
Deductions:		
Withdrawals		15,300.96
Net Worth, December 31, 1925		$6,062.27

[fol. 545] Firm No. 19

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule # 1.

Owners' Salaries:				
#1	Cattle Salesman	12 Months	$6,000.00	
#2	Hog Salesman	12 "	5,400.00	
	Total Owners Salaries			$11,400.00

Non-Owners Salaries:

#3	Cattle Salesman	12	Months	3,300.00	
#4	Cattle Salesman	10½	"	1,570.00	
#5	Hog Salesman	12	"	2,100.00	
#6	Hog Salesman	1	"	240.00	
	Total Salesman			7,210.00	
#7	Yardman	12	"	1,550.00	
#8	"	½	"	41.70	
#9	"	4	"	440.00	
#10	"	2	"	250.00	
				2,281.70	
#11	Bookkeeper	12	"	1,920.00	
	Extra Help			420.17	
	Total Non-Owners Salaries				11,831.87
	Total Salaries				$23,231.87

[fol. 546] Firm No. 19

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle	$9,774.95	
Hogs	5,838.18	
Sheep	54.00	
		$15,667.11
Mixed Cars		1,321.99
Drive-Ins and Truck-Ins:		
Cattle	3,031.38	
Calves	259.95	
Hogs	3,886.83	
Sheep	35.20	
		7,213.36
Yard Sales:		
Cattle	2,492.29	
Calves	6.63	
Hogs	3,605.38	
		6,104.30
Total Selling		$30,306.76

Buying

Straight Cars:		
Cattle	645.00	
Hogs	10.00	
Sheep	20.00	
		675.00
Drive-Outs & Truck-Outs:		
Cattle	565.80	
Hogs	4.40	
Sheep	8.60	
		578.80
Total Buying		$1,253.80

[fol. 547] Firm No. 19

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		Head
	S. D.	D. D.	
Straight Cars:			
Cattle	515	..	13,622
Hogs	369	11	30,192
Sheep	1	2	494
	885	13	44,308
Mixed Cars:			
Cattle & Calves	...	..	811
Hogs	70	..	3,071
	70	..	3,882
Drive-Ins and Truck-Ins:			
Cattle	...	..	3,901
Calves	...	..	651
Hogs	...	..	14,267
Sheep	...	..	176
			18,995
Yard Sales:			
Cattle	...	..	4,031
Calves	...	..	26
Hogs	...	..	38,723
			42,780
Total Selling	955	13	109,965

Buying

Straight Cars:			
Cattle	42	..	1,332
Hogs	...	1	131
Sheep	...	1	201
	42	2	1,664
Drive-Outs and Truck-Outs:			
Cattle	...	..	1,030
Hogs	...	..	22
Sheep	...	..	43
			1,095
Total Buying	42	2	2,759

[fol. 548] EXHIBIT 26

Auditor's Report Year Ended December 31, 1925

Firm No. 20

South Omaha, Nebraska

Balance Sheet as of December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank	$3,857.58		
Accounts Receivable	306.15		
Total Current Assets		$4,163.73	
Total Assets			$4,163.73

Liabilities and Net Worth

Current:			
Accounts Payable—Other	$52.12		
Estray Account	111.61		
Total Current Liabilities		$163.73	
Net Worth:			
Capital		4,000.00	
Total Liabilities and Net Worth			$4,163.73

[fol. 549] Firm No. 20

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank		$5,473.86	
Proceeds Receivable		1.35	
Accounts Receivable		1,629.70	
Total Current Assets			$7,104.91
Deferred:			
Deferred Advertising Expense			291.49
Total Assets			$7,396.40

Liabilities and Net Worth

Current:			
Estray Account		$1,947.29	
Accts. Payable—Yard Co.	$1,045.86		
Other	53.26		
		1,099.12	
Accrued Liabilities		47.50	
Total Current Liabilities			$3,093.91
Net Worth:			
Capital		4,000.00	
Surplus		302.49	
Total Net Worth			4,302.49
Total Liabilities and Net Worth			$7,396.40

[fol. 550] Firm No. 20

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions:		$20,590.29	
Buying Commissions		818.90	
			$21,409.19
Miscellaneous Income			.53
Gross Income			21,409.72
Less Deductions			.50
Total Operating Income			$21,409.22

Expense:				
Owners Salaries:				
Salesmen		$6,000.00		
Non-Owners Salaries:				
Salesmen	$2,400.00			
Yardmen	3,000.00			
Office	1,300.00			
Commission paid as Salary	237.20			
		6,937.20		
Total Salaries			12,937.20	
Bonuses Paid		20.00		
Travel & Entertainment		187.25		
Advertising		2,324.35		
Rent		570.00		
Telephone & Telegraph		88.71		
Stationery & Office Expense		217.28		
General Postage		72.50		
Taxes		16.87		
Bond Premiums		35.00		
Exchange Assessments & Dues		232.84		
Errors & Adjustments		2.80		
Miscellaneous		25.59		
			3,793.19	
Total Operating Expense				16,730.39
Net Operating Profit				4,678.83
Other Deductions:				
Loss in Freight Account				12.85
Net Gain				$4,665.98

[fol. 551]

Firm No. 20

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$4,000.00
Additions:			
Net Gain			4,665.98
Total			8,665.98
Deductions:			
Withdrawals		$4,188.94	
Other		174.55	
			4,363.49
Net Worth, December 31, 1925			$4,302.49

[fol. 552] Firm No. 20

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners Salaries:				
#1	Cattle Salesman	12 Mo.	$3,000.00	
#2	Hog Salesman	12 Mo.	3,000.00	
	Total Owners Salaries			$6,000.00
Non-Owners Salaries:				
#3	Cattle Salesman	12 Mo.	2,400.00	
#4	Hog Yardman	12 Mo.	1,500.00	
#5	Cattle Yardman	12 Mo.	1,500.00	
			3,000.00	
#6	Bookkeeper	12 Mo.	1,300.00	
#7	Com. Paid as Salaries Sheep		237.20	
	Total Non-Owners Salaries			6,937.20
	Total Salaries			12,937.20

[fol. 553] Firm No. 20

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

	Selling		
Straight Cars:			
Cattle & Calves	$9,981.24		
Hogs	4,663.59		
Sheep	353.60		
		$14,998.43	
Mixed Cars		1,048.95	
Drive-Ins and Truck-Ins:			
Cattle	263.95		
Calves	54.44		
Hogs	736.73		
Sheep	25.80		
		1,090.92	
Speculator & Yard Sales:			
Cattle	732.80		
Calves	25.25		
Hogs	2,703.94		
		3,461.99	
Total Selling			$20,590.29

Buying

Straight Cars:			
Cattle & Calves	$514.50		
Sheep	80.00		
		$594.50	
Drive-Outs and Truck-Outs:			
Cattle	122.00		
Calves	82.40		
Sheep	20.00		
		224.40	
Total Buying			$818.90

[fol. 554] Firm No. 20

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D.D.	Head
Straight Cars:			
Cattle & Calves	516	..	13,793
Hogs	283	12	21,364
Sheep	2	16	3,763
	801	28	38,920
Mixed Cars:			
Cattle	56	..	578
Calves			46
Hogs			2,310
Sheep			27
	56	..	2,961
Drive-Ins & Truck-Ins:			
Cattle	...	..	328
Calves	...	..	140
Hogs	...	..	2,696
Sheep	...	..	129
	...	..	3,293
Speculator & Yard Sales:			
Cattle	...	..	1,730
Calves	...	..	91
Hogs	...	..	27,534
Total Selling	...	..	29,355
	857	28	74,529

Buying

	Cars		
	S. D.	D.D.	Head
Straight Cars:			
Cattle & Calves	32	..	1,240
Sheep	...	4	946
	32	4	2,186
Drive-Outs & Truck-Outs:			
Cattle	...	..	247
Calves	...	..	206
Sheep	...	..	88
			541
Total Buying	32	4	2,727

[fol. 555] Exhibit 27

Auditor's Report, Year Ended December 31, 1925

Firm No. 21

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank (Genl. Acct.)	$460.69		
Accounts Receivable (Other)	181.00		
Notes Receivable	1,415.28		
Total Current Assets		$2,056.97	
Fixed:			
Office & Operating Equipment (Fully Depreciated)		1,250.00	
Good Will		1,000.00	
Total Assets			$4,306.97

Liabilities and Net Worth

Current:			
Bank Overdraft	$91.17		
Accounts Payable (Held a/c Brand Insp.)	257.64		
Total Current Liabilities		$348.81	

Net Worth:			
Capital Stock Authorized	25,000.00		
" " Unissued	17,500.00		
" " Outstanding	7,500.00		
Deficit	3,541.84		
Net Worth		3,958.16	
Total Liabilities and Net Worth			$4,306.97

[fol. 556] Firm No. 21

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank—Proceeds Acct.	$60.09		
Cash in Bank—General Acct.	2,357.82		
Accounts Receivable—Other	2,075.21		
Notes Receivable	1,390.28		
Total Current Assets		$5,883.40	
Fixed:			
Furniture & Fixtures	$1,411.80		
Less Dep'n on $161.80	16.18		
		1,395.62	
Horse (1)	110.00		
Less Depreciation	11.00		
		99.00	
Total Fixed Assets		1,494.62	
Good Will		1,000.00	
Total Assets			$8,378.02

Liabilities and Net Worth

Current:			
Proceeds Payable (Held a/c Brands)	$257.64		
Accounts Payable—Other	112.08		
Total Current Liabilities		$369.72	
Net Worth:			
Capital Stock Authorized	25,000.00		
" " Unissued	17,500.00		
" " Outstanding	7,500.00		
Surplus	508.30		
Total Net Worth		8,008.30	
Total Liabilities and Net Worth			$8,378.02

[fol. 557] Firm No. 21

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$16,623.73	
Buying Commissions		2,492.70	
Total Operating Income			$19,116.43
Expense:			
Salaries:			
Owner Salesmen (Cattle)	$8,200.00		
Non-Owners:			
Salesmen	1,800.00		
Office	1,884.00		
Yardmen	1,800.00		
Extra Help	34.00		
Total Salaries		13,718.00	
Travel		491.00	
Advertising		1,986.72	
Rental		780.00	
Telephone & Telegraph		293.54	
Stationery & Office Expense		246.31	
General Postage		136.50	
Donations		31.00	
Horse Expense		84.55	
Insurance		68.00	
Taxes		47.64	
Bond Premium		20.00	
Exchange Assessment & Dues		325.82	
Meals		32.10	
Depreciation		27.18	
Errors & Adjustments		67.22	
Miscellaneous		224.28	
Total Operating Expense			18,579.86
Net Operating Income			536.57
Other Deductions:			
Bad Debt		2.00	
Loss in Stockyard Account		27.06	
			29.06
Net Gain			$507.51

[fol. 558] Firm No. 21

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$3,958.16
Additions:		
Net Gain	$507.51	
Undrawn Salaries	3,542.63	
Total Additions		4,050.14
Net Worth December 31, 1925		$8,008.30

[fol. 559] Firm No. 21

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners:			
#1 Cattle Salesman	12 Mos.	$4,600.00	
#2 " "	12 "	3,600.00	
Total Owner Salesmen			$8,200.00
Non-Owner:			
#3 Hog Salesman	12 "	1,800.00	
#4 Bookkeeper	12 "	384.00	
#5 Office Clerk	12 "	1,500.00	
		1,884.00	
#6 Cattle Yard	12 "	1,800.00	
Extra Office		15.00	
" Yard		19.00	
Total Extra		34.00	
Total Non-Owner			5,518.00
Total Salaries			$13,718.00

#4 Bookkeeper devotes only part time to this firm.

[fol. 560] Firm No. 21

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$11,728.20	
Hogs	2,728.60	
Sheep	292.95	
		$14,749.75
Mixed cars		696.03

Drive-Ins and Truck-Ins:			
Cattle	195.37		
Calves	111.80		
Hogs	576.05		
Sheep	13.00		
		896.22	
Speculator—Yard Sales:			
Cattle & Calves	259.05		
Hogs	22.68		
		281.73	
Total Selling			$16,623.73
Buying			
Straight Cars:			
Cattle & Calves	2,252.70		
Sheep	188.00		
		2,440.70	
Drive-Outs and Truck-Outs:			
Cattle		52.00	
Total Buying			$2,492.70

[fol. 561] **Firm No. 21**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

	Selling		
	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle & Calves	653	...	16,060
Hogs	182	5	12,809
Sheep	11	5	2,438
	846	10	31,307
Mixed Cars:			
Cattle & Calves	35	...	483
Hogs			1,174
Sheep			172
	35		1,829
Drive-Ins and Truck-Ins:			
Cattle	...	...	252
Calves	...	...	278
Hogs	...	...	2,062
Sheep	...	...	65
			2,657
Speculator—Yard Sales:			
Cattle & Calves	...	...	653
Hogs	...	...	235
			888
Total Selling	881	10	36,681

Buying

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle and Calves	146	...	4,867
Sheep	2	8	2,820
	148	8	7,687
Drive-Outs and Truck-Outs:			
Cattle	...	...	52
Total Buying	148	8	7,739

[fol. 562] **Exhibit 28**

Auditor's Report Year Ended December 31, 1925

Firm No. 22

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$230.00		
Cash in Bank	12,026.50		
		$12,256.50	
Accounts Receivable		2,555.74	
Notes Receivable		1,530.89	
Liberty Bonds		3,000.00	
Other Investments		1,000.00	
Total Current Assets			$20,343.13
Fixed:			
Memberships		5,400.00	
Office & Operating Equipment		1,283.95	
Total Fixed Assets			6,683.95
Total Assets			$27,027.08

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.		$3,286.92	
Accounts Payable—Other		6,520.08	
Total Current Liabilities			$9,807.00
Net Worth:			
Capital Stock		8,400.00	
Surplus		8,820.08	
Total Net Worth			17,220.08
Total Liabilities and Net Worth			$27,027.08

[fol. 563]

Firm No. 22

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets			
Current:			
Cash on Hand	$230.00		
Cash in Bank	6,413.95		
		$6,643.95	
Accounts Receivable		7,230.62	
Notes Receivable		100.00	
Liberty Bonds		3,000.00	
Other Investments		1,000.00	
Total Current Assest			$17,974.57
Fixed:			
Memberships		5,400.00	
Office & Operating Equipment		1,000.00	
Total Fixed Assets			6,400.00
Total Assets			$24,374.57
Liabilities and Net Worth			
Current:			
Accounts Payable—Yard Co.	$1,787.48		
Accounts Payable—Other	4,946.93		
Total Current Liabilities			$6,734.41
Reserve:			
Reserve for Taxes			420.08
Net Worth:			
Capital Stock		8,400.00	
Surplus		8,820.08	
Total Net Worth			17,220.08
Total Liabilities and Net Worth			$24,374.57

[fol. 564]

Firm No. 22

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$55,169.33		
Buying Commission	2,574.55		
Gross Income		$57,743.88	
Less Deductions		11.35	
Total Operating Income			$57,732.93

Expenses:			
Owners' Salaries:			
Salesmen		19,950.00	
Non-Owners' Salaries:			
Salesmen	$8,900.00		
Order Buyers	3,600.00		
Yardmen	2,250.00		
Office	3,600.00		
Extra Help	90.00		
		18,440.00	
Total Salaries			38,390.00
Split Commission Paid		1,360.40	
Travel & Entertainment		1,789.60	
Advertising		4,755.95	
Rent		840.00	
Telephone & Telegraph		291.27	
Stationery & Office Expense		639.57	
General Postage		1,715.25	
Charity & Donations		63.50	
Horse & Saddle		164.52	
Insurance		467.91	
Taxes		59.24	
Bond Premiums		74.00	
Exchange Assessments & Dues		872.08	
Meals		122.95	
Depreciation		353.12	
Errors & Adjustments		5.31	
Miscellaneous		326.75	
			13,901.42
Total Operating Expenses			52,291.42
Net Gain			$5,441.51

[fol. 565]

Firm No. 22

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$17,220.08
Additions:			
Net Gain			5,441.51
Total			22,661.59
Deductions:			
Federal Income Tax		$1,954.06	
Reserve for Income Taxes		420.08	
Dividends		3,067.37	
Total Deductions			5,441.51
Net Worth December 31, 1925			$17,220.08

[fol. 566]

Firm No. 22

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Owners: Schedule 1.

#1 President, Cattle Salesman	12 Mos.	$11,700.00	
#2 Vice-President, Hog Salesman	12 "	5,250.00	
#3 Secretary-Treas. " "	12 "	3,000.00	
Total Owners' Salaries			$19,950.00

Non-Owners:

#4 Cattle Salesman	12 "	4,700.00	
#5 " "	12 "	2,100.00	
#6 Truck Hog Salesman	12 "	2,100.00	
Total Salesmen		8,900.00	
#7 Cattle Buyer	12 "	3,600.00	
#8 Yardman	3 "	450.00	
#9 "	12 "	1,800.00	
Total Yardmen		2,250.00	
# Bookkeeper	12 "	2,400.00	
#11 Stenographer	12 "	1,200.00	
Total Office		3,600.00	
Extra Help		90.00	
Total Non-Owners' Salaries			18,440.00
Total Salaries			$38,390.00

[fol. 567]

Firm No. 22

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle and Calves	$28,038.76	
Hogs	13,261.60	
Sheep	2,317.90	
		$43,618.26
Mixed Cars:		4,922.60
Drive-Ins and Truck-Ins:		
Cattle	671.85	
Calves	175.65	
Hogs	1,901.53	
Sheep	106.40	
		2,855.43

Expenses:			
Owners' Salaries:			
Salesmen		19,950.00	
Non-Owners' Salaries:			
Salesmen	$8,900.00		
Order Buyers	3,600.00		
Yardmen	2,250.00		
Office	3,600.00		
Extra Help	90.00		
		18,440.00	
Total Salaries			38,390.00
Split Commission Paid		1,380.40	
Travel & Entertainment		1,789.60	
Advertising		4,755.95	
Rent		840.00	
Telephone & Telegraph		291.27	
Stationery & Office Expense		639.57	
General Postage		1,715.25	
Charity & Donations		63.50	
Horse & Saddle		164.52	
Insurance		467.91	
Taxes		59.24	
Bond Premiums		74.00	
Exchange Assessments & Dues		872.08	
Meals		122.95	
Depreciation		353.12	
Errors & Adjustments		5.31	
Miscellaneous		326.75	
			13,901.42
Total Operating Expenses			52,291.42
Net Gain			$5,441.51

[fol. 565]

Firm No. 22

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$17,220.08
Additions:			
Net Gain			5,441.51
Total			22,661.59
Deductions:			
Federal Income Tax		$1,954.06	
Reserve for Income Taxes		420.08	
Dividends		3,067.37	
Total Deductions			5,441.51
Net Worth December 31, 1925			$17,220.08

[fol. 566] Firm No. 22

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners:			
#1 President, Cattle Salesman	12 Mos.....	$11,700.00	
#2 Vice-President, Hog Salesman	12 "	5,250.00	
#3 Secretary-Treas. " "	12 "	3,000.00	
Total Owners' Salaries			$19,950.00
Non-Owners:			
#4 Cattle Salesman	12 "	4,700.00	
#5 " "	12 "	2,100.00	
#6 Truck Hog Salesman	12 "	2,100.00	
Total Salesmen		8,900.00	
#7 Cattle Buyer	12 "	3,600.00	
#8 Yardman	3 "	450.00	
#9 "	12 "	1,800.00	
Total Yardmen		2,250.00	
# Bookkeeper	12 "	2,400.00	
#11 Stenographer	12 "	1,200.00	
Total Office		3,600.00	
Extra Help		90.00	
Total Non-Owners' Salaries			18,440.00
Total Salaries			$38,390.00

[fol. 567] Firm No. 22

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle and Calves	$28,038.76	
Hogs	13,261.60	
Sheep	2,317.90	
		$43,618.26
Mixed Cars:		4,922.60
Drive-Ins and Truck-Ins:		
Cattle	671.85	
Calves	175.65	
Hogs	1,901.53	
Sheep	106.40	
		2,855.43

Speculators and Dealers:			
Cattle and Calves	2,875.70		
Hogs	897.34		
		3,773.04	
Total Selling			$55,169.33
Buying			
Straight Cars:			
Cattle and Calves	2,302.35		
Sheep	236.00		
		2,538.35	
Drive-Outs and Truck-Outs:			
Cattle	11.60		
Calves	13.60		
Sheep	11.00		
		36.20	
Total Buying			$2,574.55

[fol. 568]

Firm No. 22

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

		Cars	Head
Straight Cars:			
Cattle and Calves	D. D. 105	1,498	38,181
Hogs	D. D. 20	905	63,887
Sheep	D. D. 20	116	29,663
		2,519	131,731
Mixed Cars:			
Cattle and Calves		262	2,812
Hogs			11,298
Sheep			267
		262	14,377
Drive-Ins and Truck-Ins:			
Cattle		...	859
Calves		...	437
Hogs		...	7,041
Sheep		...	560
			8,897
Speculators and Dealers:			
Cattle and Calves		...	7,333
Hogs		...	9,324
		...	16,357
Total Selling		2,781	171,662

Buying

		Cars	Head
Straight Cars:			
Cattle and Calves	(D. D. 9)	155	5,009
Sheep	(D. D. 9)	13	2,709
		168	7,718
Drive-Outs and Truck-Outs:			
Cattle		...	14
Calves		...	34
Sheep		...	55
		...	103
Total Buying		168	7,821

[fol. 569] Exhibit 29

Auditor's Report, Year Ended December 31, 1925

Firm No. 23

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash on Hand	$300.00		
Cash in Bank	4,040.80		
		$4,340.80	
Proceeds Receivable		4.85	
Accounts Receivable		4,062.79	
Notes Receivable	11,963.25		
" " (Discounted)	11,576.91		
		386.34	
Total Current Assets			$8,794.78
Fixed:			
Membership		1,750.00	
Office & Operating Equipment	1,608.79		
Less Reserve for Depreciation	426.98		
		1,181.81	
Total Fixed Assets			2,931.81
Deferred:			
Yard Company			20.18
Total Assets			$11,728.60

Liabilities and Net Worth

Current:			
Proceeds Payable—Held a/c Brands.		$168.59	
Accounts Payable—Other		219.09	
Accrued Liabilities		37.08	
Total Current Liabilities			$424.76
Net Worth:			
Branch House			11,303.84
Total Liabilities and Net Worth			$11,728.60

[fol. 570] Firm No. 23

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$300.00		
Cash in Bank—Gen'l Acct...	531.88		
Cash in Bank—Proceeds Acct.	1,298.54		
		$2,130.42	
Accounts Receivable		108.77	
Notes Receivable	4,148.94		
" " (Discounted)	4,027.25		
		121.69	
Total Current Assets			$2,360.88
Fixed:			
Memberships			1,750.00
Office & Operating Equipment	2,427.34		
Less Reserve for Depreciation	599.24		
		1,828.10	
Total Fixed Assets			3,578.10
Total Assets			$5,938.98

Liabilities and Net Worth

Current:			
Proceeds Payable		$800.25	
Proceeds Payable (Held a/c Brands)		229.88	
Accounts Payable—Yard Co.		.50	
Accounts Payable—Other		276.68	
Total Current Liabilities			$1,307.31
Net Worth:			
Branch House			4,631.67
Total Liabilities and Net Worth			$5,938.98

[fol. 571] Firm No. 23

South Omaha, Nebraska

Profit and Loss Statement for Year Ended

Exhibit C.

Income:			
Selling Commissions	$39,701.51		
Buying Commissions	2,537.00		
		$42,238.51	
Miscellaneous Income		1.25	
Gross Income		42,239.76	
Less Deductions		25.00	
Total Operating Income			$42,214.76
Expenses:			
Non-Owners' Salaries:			
Salesmen	22,463.34		
Yardmen	7,070.75		
Office	6,611.78		
Extra Help	311.87		
Total Salaries		36,457.74	
Travel & Entertainment	4,154.91		
Advertising	5.040.83		
Rent	1,014.00		
Telephone & Telegraph	845.98		
Stationery & Office Expense	440.34		
General Postage	312.00		
Charity & Donations	140.00		
Horse & Saddle	366.46		
Insurance	412.29		
Taxes	67.60		
Bond Premium	157.50		
Exchange Assessments	663.65		
Legal & Auditing	120.00		
Meals	128.99		
Depreciation	253.98		
Errors & Adjustments	29.64		
Miscellaneous	470.75		
Total Operating Expenses		14,618.92	51,076.66
Net Operating Loss			8,861.90
Other Income			1,242.31
			7,619.59
Other Deductions			1,430.98
Net Loss			$9,050.57

[fol. 572] Firm No. 23

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$11,303.84
Additions:		
Other		4,083.74
		15,387.58
Deductions:		
Net Loss	$9,050.57	
Other	1,705.34	
		10,755.91
Net Worth December 31, 1925		$4,631.67

[fol. 573] Firm No. 23

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Non-Owners:				
Salesmen:				
# 1 Cattle	11¾ Mos...	$4,942.56		
# 2 "	Full time..	4,808.56		
# 3 "	" " ..	4,000.01		
			$13,751.13	
# 4 Hog	" "		4,505.99	
# 5 Sheep	" "		4,206.22	
Total Salesmen's Salaries				$22,463.34
Yardmen:				
# 6 Cattle	11 Mos...	1,662.50		
# 7 "	Full time..	1,202.35		
			2,864.85	
# 8 Hog	" "		2,102.95	
# 9 Sheep	" "		2,102.95	
Total Yardmen's Salaries				7,070.75
Office:				
#10 Office Manager	Full time.....		3,605.29	
#11 Bookeeper	" "		1,804.14	
#12 Stenographer	" "		1,202.35	
Total Office				6,611.78
Extra Help				311.87
Total Salaraies				$36,457.74

[fol. 574]

Firm No. 23

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$12,851.54		
Hogs	8,194.77		
Sheep	12,681.00		
		$33,727.31	
Mixed Cars		1,996.83	
Drive-In and Truck-In Sales:			
Cattle	724.90		
Calves	84.90		
Hogs	1,791.12		
Sheep	341.40		
		2,942.32	
Dealer and Speculator Sales:			
Cattle & Calves	410.80		
Hogs	604.25		
Sheep	20.00		
		1,035.05	
Total Selling Commissions			$39,701.51

Buying

Straight Cars:			
Cattle & Calves	1,854.00		
Sheep	516.00		
		2,370.00	
Drive-Out and Truck-Out Purchases:			
Cattle	140.40		
Sheep	26.60		
		167.00	
Total Buying Commissions			2,537.00
Total Commissions			$42,238.51

[fol. 575]

Firm No. 23

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
Straight Cars:	D. D.	S. D.	No. Head
Cattle & Calves	...	693	17,623
Hogs	3	533	39,837
Sheep	620	16	166,291
Total	623	1,242	223,751

	No. Cars		
	D. D.	S. D.	No. Head
Mixed Cars:			
Cattle & Calves	...	111	1,175
Hogs			4,436
Sheep			124
Total	...	111	5,735
Drive-In and Truck-In Sales:			
Cattle	...	....	900
Calves	...	....	212
Hogs	...	....	6,277
Sheep	...	....	2,045
Total	...	....	9,434
Dealer and Speculator Sales:			
Cattle and Calves	...	....	1,104
Hogs	...	....	6,052
Sheep	...	....	557
Total	...	....	7,713
Total Selling	623	1,353	246,633
Buying			
Straight Cars:			
Cattle & Calves	...	117	4,007
Sheep	23	4	7,404
Total	23	121	11,411
Drive-Out and Truck-Out Purchases:			
Cattle	...	....	216
Sheep	...	....	217
Total	...	....	433
Total Buying	23	121	11,844
Total Volume	646	1,474	258,477

[fol. 576] Exhibit 30

Auditor's Report, Year Ended December 31, 1925

Firm No. 24

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash in Bank	$1,767.46	
Proceeds Receivable	298.67	
Accounts Receivable	40.80	
Notes Receivable	200.00	
Total Current Assets		$2,306.93
Fixed:		
Membership	12,000.00	
Furniture & Fixtures	400.00	
Total Fixed Assets		12,400.00
Total Assets		$14,706.93

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)	$146.34	
Accounts Payable (Other)	143.36	
Total Current Liabilities		$289.70
Net Worth:		
Capital	14,417.23	
Total Net Worth		14,417.23
Total Liabilities and Net Worth		$14,706.93

[fol. 577] Firm No. 24

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash in Bank	$316.45	
Accounts Receivable	60.80	
Notes Receivable	200.00	
Total Current Assets		$577.25

Fixed:

Membership	12,000.00		
Furniture & Fixtures	350.00		
Total Fixed Assets		12,350.00	
Total Assets			$12,927.25

Liabilities and Net Worth

Current Liabilities:

Accounts Payable (Yard Co.)	$101.75		
Accounts Payable (Other)	100.62		
Total Current Liabilities		$202.37	

Net Worth:

Capital		12,724.88	
Total Liabilities and Net Worth			$12,927.25

[fol. 578] Firm No. 24

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:

Selling Commission	$9,203.17		
Buying Commission	5.20		
		$9,208.37	
Miscellaneous Income		345.70	
Total Operating Income			$9,554.07

Expenses:

Owners' Salaries:			
Salesmen	5,300.00		
Non-Owners' Salaries:			
Yardmen and Office	3,058.10		
Commission paid as Salary	52.45		
Total Salaries		8,410.55	
Bonuses Paid	20.00		
Travel and Entertainment	966.50		
Advertising	130.52		
Rent	420.00		
Telephone & Telegraph	157.42		
Stationery & Office	154.50		
General Postage	125.00		
Charity and Donations	5.00		
Taxes	15.34		
Bond Premium	65.00		

Exchange Assessment and Dues....	165.54	
Depreciation	50.00	
Errors and Adjustments	9.60	
Unexplained Items	1.00	
Miscellaneous	45.09	
	2,330.51	
Total Expenses		10,741.06
Net Loss		$1,186.99

[fol. 579] Firm No. 24

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$14,417.23
Additions:		
Old Checks charged back to bank.....	$393.25	
Unlocated Differences	6.89	
Total Additions		400.14
		14,817.37
Deductions:		
Net Loss	1,186.99	
Withdrawals	905.50	
Total Deductions		2,092.49
Net Worth December 31, 1925.....		$12,724.88

[fol. 580] Firm No. 24

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners:		
#1 Cattle Salesman, full time.....	$2,650.00	
#2 Hog " " "	2,650.00	
Total Owner Salaries.....		$5,300.00
Non-Owners:		
#3 Yard and Office, full time.....	1,529.05	
#4 " " " " "	1,529.05	
		3,058.10
Commission Paid as Salary—Sheep.....		52.45
Total Salaries		$8,410.55

[fol. 581] Firm No. 24

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling			
Straight Cars:			
Cattle and Calves	$83.85		
Hogs	84.85		
		$168.70	
Mixed Cars		65.27	
Drive-Ins and Truck-Ins:			
Cattle	1,588.02		
Calves	907.30		
Hogs	6,221.66		
Sheep	99.20		
		8,816.18	
Speculator—Yard Sales:			
Cattle	92.80		
Calves	38.80		
Hogs	21.42		
		153.02	
Total Selling			$9,203.17
Buying			
Drive-Outs and Truck-Outs:			
Hogs		5.20	
Total Buying			$5.20

[fol. 582] Firm No. 24

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

	Cars		
	S. D.	D. D.	Head
Selling			
Straight Cars:			
Cattle and Calves	5	....	165
Hogs	6	....	360
	11	....	525
Mixed Cars:			
Cattle and Calves	4	....	29
Hogs			134
	4	....	163

	Cars S. D.	Cars D. D.	Head
Drive-Ins and Truck-Ins:			
Cattle	.....	....	1,986
Calves	.....	....	2,309
Hogs	.....	....	22,320
Sheep	.....	....	485
	.....	....	27,100
Speculator—Yard Sales:			
Cattle	.....	....	183
Calves	.....	....	188
Hogs	.....	....	144
	.....	....	515
Total Selling	15	....	28,303

Buying

Drive-outs and Truck-outs:			
Hogs	.....	....	26
Total Buying	.....	....	26

[fol. 583] EXHIBIT 31

Auditor's Report Year Ended December 31, 1925

Firm No. 25

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash on Hand	$300.00		
Cash in Bank	5,329.37		
		$5,629.37	
Accounts Receivable		58.24	
Total Current Assets			$5,687.61
Fixed:			
Memberships		7,500.00	
Office & Operating Equipment		1,794.25	
Total Fixed Assets			9,294.25
Deferred:			
Yard Co.			48.90
Total Assets			$15,030.76

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)		$1.45
Net Worth:		
Capital		15,029.31
Total Liabilities & Net Worth		$15,030.76

[fol. 584] Firm No. 25

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$500.00		
Cash in Bank	4,728.58		
		$5,228.58	
Accounts Receivable		10.82	
Total Current Assets			$5,239.40
Fixed:			
Memberships		7,500.00	
Office & Operating Equipment		1,520.89	
Total Fixed Assets			9,020.89
Deferred:			
Yard Co.			9.81
Total Assets			$14,270.10

Liabilities and Net Worth

Net Worth:	
Capital	$14,270.10

[fol. 585] Firm No. 25

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$37,722.02		
Buying Commission	1,075.55		
		$38,797.57	
Split Commission Received		14.00	
Miscellaneous Income		2.10	
Total Operating Income			$38,813.67

Expense:			
Owners' Salaries:			
Salesmen	9,600.00		
Office	4,800.00		
Total Owners' Salaries		14,400.00	
Non-Owners' Salaries:			
Salesmen	7,367.50		
Yardmen	4,286.50		
Office	3,180.00		
Extra Help	152.00		
Commission Paid as Salary	134.95		
Total General Salaries		15,120.95	
Travel & Entertainment	1,944.29		
Advertising	2,720.27		
Rent	780.00		
Telephone & Telegraph	593.08		
Stationery & Office Expense	800.06		
General Postage	708.31		
Charity & Donations	88.15		
Horse & Saddle	462.60		
Insurance	367.43		
Taxes	43.82		
Bond Premium	79.00		
Exchange Assessments & Dues	459.21		
Meals	208.49		
Depreciation	268.36		
Errors & Adjustments	56.84		
Miscellaneous	412.84		
Total General Expense		9,992.75	
Total Operating Expense			39,513.70
Net Operating Loss			700.03
Other Deductions:			
Miscellaneous			59.18
Net Loss			$759.21

[fol. 586] **Firm No. 25**

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924	$15,029.31
Deductions:	
Net Loss	759.21
Net Worth, December 31, 1925	$14,270.10

[fol. 587] Firm No. 25

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule #1.

Owners' Salaries:			
Salesmen:			
No. 1. Cattle Salesman—Full Time	$4,800.00		
No. 2. Hog Salesman " "	4,800.00		
Total Salesmen		$9,600.00	
Office:			
No. 3. Full Time	4,800.00		
Total Office		4,800.00	
Total Owners' Salaries			$14,400.00
Non-Owners' Salaries:			
Salesmen:			
No. 4. Cattle Salesman—Full Time		3,600.00	
No. 5. Hog Salesman—5½ Months		1,787.50	
No. 6. T. Hog Salesman—Full Time		1,980.00	
Total Salesmen			7,367.50
Yardmen:			
No. 7. Cattle Yardman—Full Time		1,500.00	
No. 8. Hog Yardman " "		1,500.00	
No. 9. Hog Yardman—2½ Months		256.00	
No. 10. Hog Yardman—3½ Months		405.50	
No. 11. Cattle Yardman—5 Months		625.00	
Total Yardmen			4,286.50
Office:			
No. 12. Full Time		2,100.00	
No. 13. " "		1,080.00	
Total Office			3,180.00
Extra Help:			
Extra Yard Help—Various			152.00
Commission Paid as Salary:			
½ Commission paid for Selling Sheep			134.95
Total Salaries			$29,520.95

[fol. 588] Firm No. 25

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$9,453.75		
Hogs	14,353.78		
Sheep	105.45		
		$23,912.98	
Mixed Cars		5,653.49	
Drive-ins and Truck-ins:			
Cattle	855.60		
Calves	251.28		
Hogs	4,030.20		
Sheep	100.20		
		5,237.28	
Yard Sales:			
Cattle & Calves	173.80		
Hogs	2,741.48		
		2,915.28	
Unlocated Difference		2.99	
Total Selling			$37,722.02

Buying

Straight Cars:			
Cattle & Calves	527.10		
Hogs	424.65		
		951.75	
Drive-outs and Truck-outs:			
Cattle and Calves	98.60		
Hogs	23.60		
Sheep	1.60		
		123.80	
Total Buying			$1,075.55

[fol. 589] Firm No. 25

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	482	....	12,552
Hogs	980	3	69,754
Sheep	5	1	809
	1,467	4	83,115

	Cars S. D.	Cars D.D.	Head
Mixed Cars:			
Cattle	306	....	3,058
Calves			8
Hogs			13,140
Sheep			219
	306	....	16,425
Drive-ins and Truck-ins:			
Cattle	.....	....	1,093
Calves	.....	....	636
Hogs	.....	....	14,472
Sheep	.....	....	554
	.....	....	16,755
Yard Sales:			
Cattle & Calves	.....	....	438
Hogs	.....	....	26,676
	.....	....	27,114
Total Selling	1,773	4	143,409
Buying			
Straight Cars:			
Cattle & Calves	30	....	923
Hogs	45	5	4,824
	75	5	5,747
Drive-outs & Truck-outs:			
Cattle & Calves	.....	....	165
Hogs	.....	....	118
Sheep	.....	....	8
	.....	....	291
Total Buying	75	5	6,038

[fol. 590]

EXHIBIT 32

Auditor's Report Year Ended December 31, 1925

Firm No. 26

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

None

Liabilities and Net Worth

None

[fol. 591] Firm No. 26

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B

Assets

None

Liabilities and Net Worth

None

[fol. 592] Firm No. 26

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commission	$2,105.40	
Total Operating Income		$2,105.40
Expenses:		
Split Commission Paid		1,053.25
Net Gain		$1,052.15

[fol. 593] Firm No. 26

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D

Net Worth December 31, 1924	
Addition:	
Net Gain	$1,052.15
Deductions:	
Withdrawals	1,052.15

[fol. 594] Firm No. 26

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle & Calves	$1,046.31	
Hogs	964.36	
		2,010.67
Mixed Cars		80.67

Drive-Ins and Truck-Ins:

Cattle	.80	
Calves	2.00	
Hogs	10.66	
Sheep	.60	
		14.06
Total Selling Commissions		$2,105.40

[fol. 595] Firm No. 26

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

	Selling Cars S. D.	Selling Cars D. D.	Head
Straight Cars:			
Cattle & Calves	53	....	1,520
Hogs	24	29	4,861
	77	29	6,381
Mixed Cars:			
Cattle & Calves		....	77
Hogs	5	....	53
Sheep		....	26
	5	....	158
Drive-Ins and Truck-Ins:			
Cattle	.....	....	1
Calves	.....	....	5
Hogs	.....	....	38
Sheep	.....	....	3
			47
Total Volume	82	29	6,586

[fol. 596] Exhibit 33

Auditor's Report Year Ended December 31, 1925

Firm No. 27

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash on hand	$100.64	
Cash in bank	443.35	
	$543.99	
Accounts Receivable	11,246.90	
Total Current Assets		$11,790.89

Fixed:			
Memberships	6,550.00		
Office & Operating Equipment	1,510.00		
Total Fixed Assets		8,060.00	
Total Assets			$19.850,89

Liabilities and Net Worth

Current:			
Estray Account	$214.99		
Accounts Payable—Yard Co	43.54		
Accounts Payable—Other	207.55		
Accrued Liabilities	730.13		
Total Current Liabilities		$1,196.21	
Net Worth:			
Capital Stock	15,000.00		
Surplus	3,654.68		
Total Net Worth		18,654.68	
Total Liabilities and Net Worth			$19,850.89

[fol. 597] Firm No. 27

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B

Assets

Current:			
Cash on Hand	$307.11		
Cash in Bank—Proceeds Acct.	207,83		
Cash in Bank—General Acct.	534.15		
	$1,049.09		
Accounts Receivable	13,939.31		
Total Current Assets		$14,988.40	
Fixed:			
Memberships	6,550.00		
Office & Operating Equipment	1,640.00		
Total Fixed Assets		8,190.00	
Deferred:			
Office Supplies		159.77	
Total Assets			$23,338.17

Liabilities and Net Worth

Current:			
Estray Account	$217.21		
Accounts Payable-Other	301.64		
Accrued Liabilities	430.17		
Total Current Liabilities		$949.02	

Net Worth:

Capital Stock	15,000.00	
Undivided Profits	5,979.41	
Surplus	1,409.74	
Total Net Worth		22,389.15
Total Liabilities and Net Worth		$23,338.17

[fol. 598] Firm No. 27

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C

Income:

Selling Commissions	$36,177.19	
Buying Commissions	2,666.16	
Total Operating Income		$38,843.35

Expenses:

Owners' Salaries:

Salesmen	$6,000.00	
Other	5,625.00	
	$11,625.00	

Non-Owner Salaries:

Salesmen	5,562.50	
Office	3,900.00	
Extra Help	518.25	
Commissions paid as salary	138.45	
Other	1,500.00	
	11,619.20	
Total Salaries		23,244.20
Bonuses paid	70.00	
Travel & Entertainment	1,814.49	
Advertising	2,868.34	
Rent	780.00	
Telephone & Telegraph	626.53	
Stationery & Office Expense	782.24	
General Postage	236.66	
Charity & Donations	245.50	
Horse & Saddle	269.73	
Taxes	21.85	
Bond Premiums	50.00	
Exchange Assessment & Dues	618.57	
Meals	340.10	
Depreciation	373.16	
Errors & Adjustments	11.50	
Miscellaneous	489.57	
	9,598.24	
Total Operating Expense		32,842.44
Net Operating Profit		6,000.91
Other Deductions		21.50
		$5,979.41

[fol. 599] Firm No. 27

South Omaha, Nebraska

Reconciliation of Net Worth December 31, 1925

Exhibit D

Net Worth December 31, 1924		$18,654.68
Additions:		
Net Gain	$5,979.41	
	5,979.41	
Total		24,634.09
Deductions:		
Other		2,244.94
Net Worth December 31, 1925		$22,389.15

[fol. 600] Firm No. 27

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1

Onwers:					
#1	Cattle Salesman	12 Mos.		$6,000.00	
#2	Cattle Yardman	12 "		2,325.00	
#3	Cattle Order Buyer	12 "		3,300.00	
Total Owners					$11,625.00
Non-Owners:					
Salesmen:					
#4	Cattle Salesman	Full Time	$2,395.00		
#5	Hog Salesman	" "	2,400.00		
#6	Hog Salesman	2 Mos.	287.50		
#7	Cattle Salesman	2-2/5 Mos.	480.00		
Total Salesmen				5,562.50	
Office:					
#8	Office Manager	Full Time	2,400.00		
#9	Stenographer	" "	1,500.00		
Total Office				3,900.00	
Extra Help-Yardmen Cattle			388.50		
" " Yardmen Hogs			4.00		
" " Office			125.75		
Total Extra Help				518.25	
#10	Commission paid as Salary-Sheep			136.45	
#11	Cattle Brand man 5-3/4 Mos.			1,500.00	
Total Non-Owners					11,619.20
Total Salaries					$23,244.20

[fol. 601] Form No. 27

South Omaha, Nebraska

Statement of Commission Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle and Calves	$26,885.41	
Hogs	2,209.70	
Sheep	234.60	
		$29,329.71
Mixed Cars		1,454.72
Drive-ins & Truck-ins:		
Cattle	1,809.30	
Calves	52.20	
Hogs	1,381.48	
Sheep	30.80	
		3,273.78
Dealers and Speculators:		
Cattle & Calves	2,035.44	
Hogs	91.97	
		2,127.41
Total Selling		36,185.62
Add Unlocated Difference		8.43
Total Selling Commissions		$36,177.19

Buying

Straight Cars:		
Cattle & Calves	$1,534.90	
Hogs	607.69	
		$2,142.59
Drive-outs and Truck-outs:		
Cattle	452.05	
Calves	1.20	
Hogs	57.52	
Sheep	9.60	
		520.37
Total		2,662.96
Add Unlocated Difference		3.20
Total Buying Commissions		$2,666.16

[fol. 602]

Firm No. 27

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle and Calves	1,375	....	39,163
Hogs	153	....	10,789
Sheep	2	10	2,507
	1,530	10	52,459
Mixed Cars:			
Cattle and Calves / Hogs / Sheep	73	....	953 / 3,067 / 71
	73	....	4,091
Drive-ins and Truck-ins:			
Cattle	.....	....	2,468
Calves	.....	....	133
Hogs	.....	....	5,092
Sheep	.....	....	154
	.....	....	7,847
Dealers and Speculators:			
Cattle and Calves	.....	....	3,781
Hogs	.....	....	592
	.....	....	4,373
Total Selling	1,603	10	68,770

Buying

Straight Cars:			
Cattle and Calves	97	....	3,181
Hogs	41	4	5,580
	138	4	8,761
Drive-outs and Truck-outs:			
Cattle	.....	....	679
Calves	.....	....	3
Hogs	.....	....	290
Sheep	.....	....	48
	.....	....	1,020
Total Buying	138	4	9,781

[fol. 608] EXHIBIT 34.

Auditor's Report Year Ended December 31, 1925

Firm No. 28

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

	Assets		
Current:			
Cash on Hand	$96.35		
Cash in Bank	10,331.42		
	$10,427.77		
Proceeds Receivable	1,103.68		
Accounts Receivable	3,115.66		
Notes Receivable	24,339.97		
Total Current Assets		$38,987.08	
Fixed:			
Memberships	9,400.00		
Office & Operating Equipment	5,846.76		
Real Estate & Farms	13,271.49		
Miscellaneous	2,000.00		
Total Fixed Assets		30,518.25	
Total Assets			$69,505.33
	Liabilities and Net Worth		
Current:			
Proceeds Payable	$1,782.43		
" " (Held a/c Brands)	1,477.33		
Accounts Payable—Other	3,822.67		
Notes Payable	14,297.45		
Total Current Liabilities		$21,379.88	
Deferred:			
Interest and Discount		1,146.05	
Net Worth:			
Capital		46,979.40	
Total Liabilities and Net Worth			$69,505.33

[fol. 604] Firm No. 28

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets			
Current:			
Cash on Hand	$422.63		
Cash in Bank	6,129.49		
	$6,552.12		
Proceeds Receivable	1,854.86		
Accounts Receivable	7,154.75		
Notes Receivable	29,283.67		
Total Current Assets		$44,845.40	
Fixed:			
Membership	4,750.00		
Office & Operating Equipment	6,032.73		
Real Estate & Farms	18,822.79		
Miscellaneous	2,000.00		
Total Fixed Assets		31,605.52	
Deferred:			
Yard Co.		512.97	
Total Assets			$76,963.89
Liabilities and Net Worth			
Current:			
Proceeds Payable	$4,564.50		
" " (Held a/c Brands)	1,434.66		
Accounts Payable—Yard Co.	3,067.76		
" " —Other	1,585.38		
Notes Payable	14,902.52		
Accrued Liabilities	100.05		
Total Current Liabilities		$25,654.87	
Deferred:			
Interest and Discount		3,337.32	
Net Worth:			
Capital	43,860.40		
Undivided Profits	4,111.30		
Total Net Worth		47,971.70	
Total Liabilities and Net Worth			$76,963.89

[fol. 605] Firm No. 28

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$88,152.13		
Buying Commission	7,146.05		
	$95,298.18		
Split Commission	296.47		
Miscellaneous Income	180.00		
Gross Income		$95,774.65	
Less Deductions		13.97	
Net Operating Income			$95,760.68
Expenses:			
Owners' Salaries:			
Salesmen	15,799.92		
Office	14,799.96		
		30,599.88	
Non-Owners' Salaries:			
Salesmen	10,844.40		
Order Buyers	11,027.50		
Yardmen	7,914.91		
Office	6,855.00		
Extra Help	15.00		
		36,656.81	
Total Salaries		67,256.69	
Travel and Entertainment	2,557.96		
Advertising	9,829.76		
Rent	2,040.00		
Telephone & Telegraph	814.59		
Stationery & Office Expense	946.80		
Charity and Donations	139.50		
Horse and Saddle	205.35		
Insurance	947.46		
Taxes	132.29		
Bond Premiums	134.00		
Exchange Assessments & Dues	1,281.04		
Legal and Auditing	601.12		
Meals	161.20		
Errors and Adjustments	94.49		
Miscellaneous	503.34		
		20,388.90	
Total Operating Expenses			87,646.59
Net Operating Profit			8,115.09
Other Deductions			618.94
Net Gain			$7,496.15

[fol. 606] Firm No. 28

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$46,979.40
Additions:		
Net Gain	$7,496.15	
Other	34,004.88	
		41,501.03
Total		88,480.43
Deductions:		
Other		40,508.73
Net Worth December 31, 1925		$47,971.70

[fol. 607] Firm No. 28

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
#1. Cattle Salesmen—Full time	$4,999.92		
#2. Hog Salesman " "	10,800.00		
Total Owners' Salaries—Salesmen		$15,799.92	
A #3. Manager Full time	10,800.00		
B #4. Office Manager " "	3,999.96		
Total Owners' Salaries—Other		14,799.96	
Total Owners' Salaries			$30,599.88
Non-Owners' Salaries:			
Cattle Department:			
#5. Salesman—Full time	$3,600.00		
#6. " " "	3,200.00		
	6,800.00		
Hog Department:			
#7. Salesman—4 Days	44.44		
Sheep Department:			
#8. Salesman—Full time	3,999.96		
Total Salesmen Salaries		10,844.40	
# 9. Buyer—Full time	3,600.00		
#10. " " "	2,400.00		
C #11. " 5 Mos.	2,800.00		
	8,800.00		

Sheep Department:			
$12. Buyer—Full time		2,227.50	
Total Buyers' Salaries			11,027.50
Cattle Department:			
$13. Yardman—Full time		2,130.00	
$14. " 5 Mos., 10 Days		810.00	
$15. " 5 " 26 "		740.84	
$16. " 4 " 8 "		271.57	
		3,952.41	
Hog Department:			
$17. Yardman—Full time		2,132.50	
$18. " " "		1,830.00	
		3,962.50	
Total Yardman's Salaries			7,914.91
Office:			
$19. Office Assistant—Full time		2,700.00	
$20. Stenographer " "		1,680.00	
$21. " " "		1,680.00	
$22. " " "		795.00	
			6,855.00
Extra Help—Hog Dept.			15.00
Total Non-Owners' Salaries			36,656.81
Total Salaries			$67,256.69

A—$3 Manager 95%—Hog Sales 5%.
B—$4 Office Manager 98%—Hog Sales 2%.
C—$11 Buyer 90%—Sales 10%.

[fol. 608]

Firm No. 28

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle and Calves	$47,634.11	
Hogs	19,316.74	
Sheep	4,970.96	
		$71,921.81
Mixed Cars		9,257.60
Drive-Ins:		
Cattle	1,583.63	
Calves	343.54	
Hogs	3,324.20	
Sheep	870.50	
		6,121.87

Yard Sales:			
Cattle and Calves	463.85		
Hogs	333.79		
Sheep	31.90		
		829.54	
		88,130.82	
Add Unlocated Difference		21.31	
Total Selling Commissions			$88,152.13

Buying

Straight Cars:			
Cattle	$4,803.70		
Hogs	85.00		
Sheep	2,054.00		
		$6,942.70	
Mixed Cars		15.00	
Drive-Outs:			
Cattle	106.50		
Calves	8.30		
Hogs	6.60		
Sheep	61.20		
		182.60	
Yard Purchases:			
Cattle		5.75	
Total Buying Commissions			$7,146.05

[fol. 609] **Firm No. 28**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	D. D.	S. D.	Head
Straight Cars:			
Cattle and Calves	...	2,554	65,512
Hogs	11	1,317	94,871
Sheep	171	98	52,291
	182	3,969	212,674
Mixed Cars:			
Cattle and Calves			6,005
Hogs	...	502	19,858
Sheep			718
	...	502	26,581
Drive-Ins:			
Cattle	...	....	1,895
Calves	...	....	863
Hogs	...	....	12,132
Sheep	...	....	4,375
	....	....	19,265

Yard Sales:			
Cattle and Calves	...	....	1,144
Hogs	...	....	3,109
Sheep	...	....	614
	...	....	4,867
Total Selling	182	4,471	263,387

Buying

Straight Cars:			
Cattle and Calves	...	312	9,725
Hogs	1	4	773
Sheep	74	41	29,722
	75	357	40,220
Mixed Cars:			
Cattle } Hogs . }	...	1	{ 15 / 13
	...	1	28
Drive-Outs:			
Cattle	...	....	136
Calves	...	....	22
Hogs	...	....	21
Sheep	...	....	306
	...	....	485
Yard Purchases:			
Cattle	...	....	7
Total Buying	75	358	40,740

[fol. 610]

EXHIBIT 35

Auditor's Report Year Ended December 31, 1925

Firm No. 29

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Proceeds Receivable	$177.50	
Accounts Receivable	1,637.47	
Notes Receivable	2,000.00	
Total Current Assets		$3,814.97

Fixed:			
Memberships	4,000.00		
Office & Operating Equipment	1,000.00		
Total Fixed Assets		5,000.00	
Total Assets			$8,814.97

Liabilities and Net Worth

Current:			
Bank Overdraft	$890.07		
Proceeds Payable	146.57		
Accounts Payable (Other)	9.90		
Total Current Liabilities		1,046.54	
Net Worth:			
Capital	5,000.00		
Undivided Profits	2,768.43		
Total Net Worth		7,768.43	
Total Liabilities and Net Worth			$8,814.97

[fol. 611]

Firm No. 29

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Proceeds Receivable	$1.00		
Accounts Receivable	419.60		
Notes Receivable	2,000.00		
Total Current Assets		$2,420.60	
Fixed:			
Memberships	4,000.00		
Office & Operating Equipment	1,000.00		
Total Fixed Assets		5,000.00	
Total Assets			$7,420.60

Liabilities and Net Worth

Current:			
Bank Overdraft	$399.44		
Proceeds Payable	204.27		
Accrued Liabilities	70.00		
Total Current Liabilities		$673.71	

Net Worth:

Capital	5,000.00		
Undivided Profits	1,746.89		
Total Net Worth		6,746.89	
Total Liabilities and Net Worth			$7,420.60

[fol. 612] Firm No. 29

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:

Selling Commissions	$32,760.09		
Buying Commissions	1,640.65		
		34,400.74	
Miscellaneous Income		2,470.68	
Total Operating Income			$36,871.42

Expenses:

Non-Owners' Salaries:			
Salesmen	$12,595.00		
Yardmen	1,890.00		
Office	1,800.00		
Extra Help	20.00		
Total Salaries		16,305.00	
Clearance and Split Commission	479.60		
Travel & Entertainment	1,240.95		
Advertising	2,147.79		
Rent	840.00		
Telephone & Telegraph	540.53		
Stationery & Office Expense	306.00		
General Postage	827.20		
Charity and Donations	70.00		
Insurance	245.19		
Taxes	28.03		
Premium & Bonds	193.00		
Exchange Assessments & Dues	621.10		
Legal & Auditing	10.00		
Meals	609.40		
Miscellaneous	319.27		
		8,478.06	
Total Operating Expense			$24,783.06
Net Operating Profit			$12,088.36

[fol. 613]

Firm No. 29

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924	$7,768.43
Additions:	
Net Gain	12,088.36
Total	19,856.79
Deduct:	
Other	13,109.90
Net Worth December 31, 1925	$6,746.89

[fol. 614]

Firm No. 29

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Non-Owner's Salaries: Schedule 1

#1 Cattle Salesman	Full Time	$4,800.00	
#2 Cattle Salesman	" "	5,000.00	
#3 Hog Salesman	" "	2,795.00	
Total Salesmen			$12,595.00
#4 Cattle Yardman	" "		1,890.00
#5 Office	" "		1,800.00
Extra Help			20.00
Total Salaries			16,305.00

[fol. 615]

Firm No. 29

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Selling Schedule 2.

Straight Cars:		
Cattle and Calves	$13,722.91	
Hogs	7,921.18	
Sheep	125.45	
		$21,769.54
Mixed Cars		5,188.00

Drive-Ins and Truck-Ins:

Cattle	603.05	
Calves	222.65	
Hogs	980.33	
Sheep	29.64	
		1,835.67

Yard and Speculator Sales:

Cattle and Calves	3,945.00	
Hogs	27.02	
		3,972.02
Total		32,765.23
Less Unlocated Difference		5.14
		$32.760.09

Buying

Straight Cars:

Cattle & Calves	1,483.25	
Sheep	108.00	
		1,591.25

Drive-Outs and Truck-Outs:

Cattle	18.25	
Calves	23.80	
Hogs	3.00	
Sheep	1.00	
		46.05
		1,637.30
Add Unlocated Difference		3.35
		$1,640.65

[fol. 616] Firm No. 29

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

Selling

	No. Cars D. D.	No. Cars S. D.	No. Head
Straight Cars:			
Cattle & Calves	..	744	19,354
Hogs	1	449	38,445
Sheep	4	3	1,190
	5	1,196	58,989
Mixed Cars:			
Cattle & Calves, Hogs, Sheep	.....	272	3,724 / 11,302 / 232
	.....	272	15,258

Drive-Ins and Truck-Ins:			
Cattle			762
Calves			560
Hogs			3,545
Sheep			148
			5,015
Yard and Speculator Sales:			
Cattle and Calves			9,782
Hogs			235
			10,017
Total Selling	5	1,468	89,279
Buying			
Straight Cars:			
Cattle and Calves		98	3,037
Sheep	4	2	1,320
	4	100	4,357
Drive-Outs and Truck-Outs:			
Cattle			21
Calves			59
Hogs			15
Sheep			5
			100
Total Buying	4	100	4,457

[fol. 617]

Exhibit 36.

Auditor's Report Year Ended December 31, 1925.

Firm No. 30

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

	Assets		
Current:			
Cash on Hand	$100.00		
Cash—Proceeds Account	3,193.36		
Cash—General Account	2,668.69		
		$5,962.05	
Proceeds Receivable		3,884.76	
Accounts Receivable		2,000.00	
Stocks		500.00	
Total Current Assets			$12,346.81
Fixed:			
Office & Operating Equipment			865.00
Total Assets			$13,211.81

Liabilities and Net Worth

Current:			
Proceeds Payable a/c Brands		$60.91	
Accounts Payable—Yard Co.....		2,985.05	
" —Other		165.85	
Total Current Liabilities			$3,211.81
Net Worth:			
Capital		10,000.00	
Total Net Worth			10,000.00
Total Liabilities and Net Worth			$13,211.81

[fol. 618] Firm No. 30

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$200.00		
Cash—Proceeds Account.	4,511.34		
Cash—General Account..	731.66		
		$5,443.00	
Proceeds Receivable		4,766.95	
Accounts Receivable		3,500.25	
Stocks		500.00	
Total Current Assets			$14,210.20
Fixed:			
Office & Operating Equipment.....		1,536.23	
Less Depreciation		155.00	
Total Fixed Assets			1,381.25
Total Assets			$15,591.43

Liabilities and Net Worth

Current:			
Proceeds Payable a/c Brands.....		$1,533.94	
Accounts Payable—Yard Co.	$3,103.38		
—Other ..	245.62		
		3,349.00	
Accrued Liabilities		174.20	
Total Current Liabilities			$5,057.14
Net Worth:			
Partners Capital		10,000.00	
Undivided Profits		534.29	
Total Net Worth			10,534.29
Total Liabilities and Net Worth			$15,591.43

[fol. 619]

Firm No. 30

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$60,667.50		
Buying Commissions	2,096.86		
Gross Income		$62,764.36	
Less Deductions		61.95	
Total Operating Income			$62,702.41
Expenses:			
Owners' Salaries:			
Salesmen	10,800.00		
Non-Owners' Salaries:			
Salesmen	7,937.50		
Feeder Buyer	2,400.00		
Yardmen	6,099.16		
Office	4,109.99		
Extra Help	67.00		
Total Salaries		31,413.65	
Advertising		4,278.86	
Stationery & Office Expenses		538.26	
Rent		990.00	
Travel and Entertainment		1,714.00	
Horse and Saddle		78.45	
Insurance		449.42	
Split Commission paid		71.00	
Telephone & Telegraph		516.50	
Meals		132.15	
Bond		97.50	
Exchange Assessment & Dues		878.31	
General Postage		46.80	
Charity and Donations		97.00	
Taxes		49.97	
Errors and Adjustments		21.19	
Unexplained		5.00	
Depreciation		155.00	
Miscellaneous		671.17	
Total Operating Expenses			42,204.23
Net Operating Profit			20,498.18
Other Deductions:			
Interest Paid		5.00	
Estray		29.49	
Loss Branding Account		6.64	
Bad Account		209.92	
Loss on Cattle resold		336.54	
Net Gain			587.59
			$19,910.59

[fol. 620] Firm No. 30

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$10,000.00
Add:		
Net Gain	$19,910.59	
Adjustment Fixed Assets	1.77	
Old Accounts Recovered	64.50	
		19,976.86
		9,976.86
Deduct:		
Loss on Fixed Assets	5.00	
Adjustment Cash Account	10.00	
Withdrawals	19,427.57	
		19,442.57
Net Worth December 31, 1925		$10,534.29

[fol. 621] Firm No. 30

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

		Mos.		
Owners Salaries:				
#1	Cattle Salesman	12	$5,400.00	
#2	" "	12	5,400.00	
	Total Owners' Salaries			$10,800.00
Non-Owners' Salaries:				
#3	Hog Salesman	11½	3,400.00	
#4	" " (Contract)	"	4,537.50	
	Total Salesmen Salaries			7,937.50
#5	Cattle Feeder Buyer	12	2,400.00	
	Total Feeder Buyer Salaries			2,400.00
#6	Cattle Yardman	12	2,090.00	
#7	" "	12	1,765.00	
#8	Hog "	12	2,148.33	
#9	" "	½	95.83	
	Total Yardmen Salaries			6,099.16

Office:

$10 Bookkeeper	12	2,496.66	
$11 Stenographer	12	1,413.33	
$12 "	1	200.00	
Total Office Salaries			4,109.99
Extra Help:			
Various			67.00
Total Salaries			$31,413.65

[fol. 622]

Firm No. 30

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle & Calves	$36,800.17	
Hogs	11,624.29	
Sheep	106.25	
		$48,530.71
Mixed Cars		3,806.55
Drive-Ins and Truck-Ins:		
Cattle	659.22	
Calves	89.55	
Hogs	1,015.77	
Sheep	24.20	
		1,788.74
Speculator—Yard Sales:		
Cattle	2,573.18	
Calves	16.40	
Hogs	3,820.26	
Sheep	1.20	
		6,411.04
Total Selling		60,537.04
Add Unlocated Difference		130.46
		$60,667.50

Buying

Straight Cars:		
Cattle & Calves	$1,853.50	
Hogs	28.00	
		1,881.50
Speculator—Yard Sales:		
Cattle & Calves	91.85	
Hogs	123.51	
		215.36
Total Buying		$2,096.86

[fol. 623] Firm No. 30

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

	No. Cars		
	S. D.	D. D.	No. Head
Selling			
Straight Cars:			
Cattle & Calves	1,735	...	47,419
Hogs	746	8	53,625
Sheep	4	1	886
	2,485	9	101,930
Mixed Cars:			
Cattle Calves Hogs	198	...	2,182 8,644 58
	198	...	10,884
Drive-Ins and Truck-Ins:			
Cattle	...	...	865
Calves	...	...	222
Hogs	...	...	3,836
Sheep	...	...	121
	...	...	5,044
Speculator—Yard Sales:			
Cattle	...	...	6,405
Calves	...	...	64
Hogs	...	...	39,251
Sheep	...	...	6
	...	...	45,726
Total Selling	2,683	9	213,584
Buying			
Straight Cars:			
Cattle & Calves	115	...	3,737
Hogs	2	...	290
	117	...	4,027
Speculator—Yard Sales:			
Cattle & Calves	...	...	211
Hogs	...	...	1,021
	...	...	1,232
Total Buying	117	...	5,259

[fol. 624] EXHIBIT 37

Auditor's Report Year Ended December 31, 1925

Firm. No. 31

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

	Assets		
Current:			
Cash in Bank	$5,135.36		
Accounts Receivable	151.25		
Notes Receivable	400.00		
Total Current Assets		$5,686.61	
Fixed:			
Memberships		8,000.00	
Office & Operating Equipment	$4,761.69		
Less Reserve for Depreciation	538.36		
		4,223.33	
Total Fixed Assets		12,223.33	
Total Assets			$17,909.94
	Liabilities and Net Worth		
Current:			
Notes Payable	$3,000.00		
Total Current Liabilities		$3,000.00	
Net Worth:			
Capital		14,909.94	
Total Liabilities and Net Worth			$17,909.94

[fol. 625] Firm No. 31

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

	Assets		
Current:			
Cash in Bank	$6,848.29		
Accounts Receivable	199.69		
Notes Receivable	400.00		
Total Current Assets		$7,447.98	

Fixed:			
Memberships		8,000.00	
Office & Operating Equipment	$5,420.61		
Less Depreciation F & F	538.36		
		4,882.25	
Total Fixed Assets		12,882.25	
Deferred:			
Prepaid Expenses		1.50	
Total Assets			$20,331.73
Liabilities and Net Worth			
Current:			
Accounts Payable—Yard Co	$1,332.77		
Notes Payable	8,500.00		
Total Current Liabilities		$9,832.77	
Net Worth:			
Capital	18,938.94		
Less Deficit	8,439.98		
Total Net Worth		10,498.96	
Total Liabilities and Net Worth			$20,331.73

[fol. 628]

Firm No. 31

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$44,339.91		
Buying Commissions	4,843.80		
		$49,183.71	
Miscellaneous Income		104.85	
Gross Income		49,288.56	
Less Deductions		67.80	
Total Operating Income			$49,220.76
Expenses:			
Non-Owners' Salaries:			
Salesmen	24,104.09		
Yardmen	5,972.50		
Office	10,200.00		
Extra Help	148.70		
Total Salaries		40,425.29	

Bonuses Paid	350.00	
Split Commission Paid	669.90	
Advertising	4,108.65	
Travel and Entertainment	3,315.26	
Stationery & Office Expense	1,062.06	
Rent	1,980.00	
Horse and Saddle	318.00	
Bond	62.50	
Exchange Assessment and Dues	804.32	
General Postage	67.00	
Telephone & Telegraph	991.81	
Meals	334.20	
Legal and Auditing	140.00	
Insurance	886.26	
Taxes	27.81	
Charity and Donations	61.00	
Unexplained	.50	
Miscellaneous	990.31	
Total Operating Expenses		56,594.87
Net Operating Loss		7,374.11
Other Income:		
Miscellaneous		43.67
Total		7,330.44
Other Deductions:		
Miscellaneous		1,109.54
Net Loss		$8,439.98

[fol. 627]

Firm No. 31

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$14,909.94
Additions:		
Advances from Chicago House	$5,500.00	
Refund from suit	1,000.00	
Horses previously charged Expense	270.00	
		6,770.00
		21,679.94
Deductions:		
Net Loss 1925	8,439.98	
Loss—Lawsuit	2,250.00	
Legal expense a/c Lawsuit	491.00	
		11,180.98
Net Worth December 31, 1925		$10,498.96

[fol. 628]

Firm No. 31

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

	Mos.		
Non-Owner Salaries:			
# 1 Cattle Salesman	12	$8,000.00	
# 2 " "	12	3,500.00	
# 3 " "	12	2,700.00	
# 4 " "	5½	1,512.50	
# 5 " "	11	166.67	
# 6 Hog "	12	4,999.92	
# 7 " "	8	3,000.00	
# 8 Sheep "	1	225.00	
Total Salesmen Salaries			$24,104.09
# 9 Cattle Yardman	12	2,100.00	
#10 " "	4	700.00	
#11 " "	3½	472.50	
#12 " "	6	900.00	
#13 Hog "	12	1,800.00	
Total Yardmen Salaries			5,972.50
#14 Office Manager	12	3,300.00	
#15 Cashier	12	2,100.00	
#16 Clerk	12	1,680.00	
#17 Stenographer	12	1,800.00	
#18 Stenographer	12	1,320.00	
Total Office Salaries			10,200.00
Extra Help—Office		106.70	
" " —Various		42.90	
			148.70
Total Salaries			$40,425.29

[fol. 629]

Firm No. 31

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle	$23,603.62	
Hogs	11,030.30	
Sheep	851.90	
		$35,485.82
Mixed Cars		2,974.12

Drive-Ins and Truck-Ins:

Cattle	916.45	
Calves	167.60	
Hogs	1,878.16	
Sheep	185.40	
		3,147.61

Yard Sales:

Cattle	1,820.85	
Calves	30.60	
Hogs	880.91	
		2,732.36
Total Selling		**$44,339.91**

Buying

Straight Cars:

Cattle	4,294.00	
Hogs	10.00	
Sheep	280.00	
		4,584.00

Drive-Outs:

Cattle	212.80	
Calves	16.80	
Hogs	9.20	
Sheep	21.00	
		259.80
Total Buying		**$4,843.80**

[fol. 630] **Firm No. 31**

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

Straight Cars:

	Cars		
	S. D.	D.D.	Head
Cattle	1,220	..	31,942
Hogs	688	47	55,517
Sheep	4	39	9,756
	1,912	86	97,215

Mixed Cars:

Cattle & Calves	160	1,600
Hogs		7,528
Sheep		214
	160	9,342

	Cars		
	S. D.	D.D.	Head
Drive-Ins & Truck-Ins:			
Cattle	...	..	1,154
Calves	...	..	419
Hogs	...	..	6,806
Sheep	...	..	962
	...	..	9,341
Yard Sales:			
Cattle	...	..	4,445
Calves	...	..	143
Hogs	...	..	9,263
			13,851
Total Selling	2,072	86	129,749
Buying			
Straight Cars:			
Cattle	283	..	9,227
Hogs	...	1	104
Sheep	...	14	4,376
	283	15	13,707
Drive-Outs:			
Cattle	...	..	282
Calves	...	..	40
Hogs	...	..	36
Sheep	...	..	105
			463
Total Buying	283	15	14,170

[fol. 631] Exhibit 38

Auditor's Report, March 1-December 31, 1925

Firm No. 32

South Omaha, Nebraska

Balance Sheet as at March 1, 1925

Exhibit A.

Assets		
Current:		
Cash in Bank	$1,500.00	
Total Assets		$1,500.00
Liabilities and Net Worth		
Net Worth:		
Capital	$1,500.00	
Total Liabilities and Net Worth		$1,500.00

[fol. 632] Firm No. 32

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank	$13.54		
Total Current Assets		$13.54	
Fixed:			
Office & Operating Equipment	322.23		
Total Fixed Assets		322.23	
Total Assets			$335.77

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.	$5.74		
" " —Other	7.80		
Total Current Liabilities		$13.54	
Net Worth:			
Capital	322.23		
Total Net Worth		322.23	
Total Liabilities and Net Worth			$335.77

[fol. 633] Firm No. 32

South Omaha, Nebraska

Profit and Loss Statement for Period March 1, 1925, to December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$7,435.73	
Buying Commissions		3,852.85	
Total Operating Income			$11,288.58
Expenses:			
Non-Owners' Salaries:			
Salesmen	$2,000.00		
Yardmen	979.78		
Office	627.00		
Extra Help	12.00		
Total Salaries		3,618.78	

Split Commission Paid	57.10		
Advertising	354.37		
Rent	650.00		
Telephone	466.59		
Travel & Entertainment	1,070.05		
Insurance	120.49		
Stationery & Office Expense	267.75		
General Postage	35.00		
Horse & Saddle	388.00		
Exchange Assessment and Dues	220.29		
Bond	15.00		
Unexplained	6.60		
Miscellaneous	69.55		
		3,720.79	
Total Operating Expenses			7,339.57
Net Operating Profit			3,949.01
Other Income:			
Miscellaneous			.13
			3,949.14
Other Deductions:			
Miscellaneous			222.20
Net Gain			$3,726.94

[fol. 634] Firm No. 32

South Omaha, Nebraska

Reconciliation of Net Worth for Period March 1, 1925, to December 31, 1925

Exhibit D.

Net Worth March 1, 1925	$1,500.00
Add:	
Net Gain	3,726.94
	5,226.94
Deduct:	
Withdrawals	4,904.71
Net Worth, December 31, 1925	$322.23

[fol. 635] Firm No. 32

South Omaha, Nebraska

Statement of Salaries for Period March 1, 1925, to December 31, 1925

Schedule 1.

Non-Owners' Salaries:

	Mos.		
$1 Hog Salesman	10	$2,000.00	
Total Salesmen			$2,000.00

	Mos.		
#2 Hog Yardman	3	375.00	
#2 " "	4¾	604.78	
Total Yardmen			979.78
#4 Stenographer	7	450.00	
#5 "	3	177.00	
Total Office			627.00
Extra Help:			
Various		12.00	
Total Extra Help			12.00
Total Salaries			$3,618.78

[fol. 636] Firm No. 32

South Omaha, Nebraska

Statement of Commissions Period from March 1, 1925, to December 31, 1925

Schedule 2.

Selling			
Straight Cars:			
Cattle and Calves	$3,666.17		
Hogs	1,102.70		
		$4,768.87	
Mixed Cars			557.25
Drive-Ins and Truck-Ins:			
Cattle	1,275.00		
Calves	13.85		
Hogs	495.51		
Sheep	30.00		
		1,814.36	
Speculators and Dealers:			
Cattle	269.05		
Calves	2.40		
Hogs	23.80		
		295.25	
Total Selling			$7,435.73
Buying			
Straight Cars:			
Cattle and Calves	3,571.70		
Sheep	80.00		
		3,651.70	
Drive-Outs and Truck-Outs:			
Cattle	199.15		
Sheep	2.00		
		201.15	
Total Buying			$3,852.85

[fol. 637] Firm No. 32

South Omaha, Nebraska

Statement of Volume Period from March 1, 1925, to December 31, 1925
Schedule 3.

Selling

	Cars	Head
Straight Cars:		
Cattle and Calves	199	5,147
Hogs	76	5,315
	275	10,462
Mixed Cars:		
Cattle	32	344
Calves		34
Hogs		1,216
Sheep		3
	32	1,597
Drive-Ins and Truck-Ins:		
Cattle	...	1,632
Calves	...	36
Hogs	...	1,795
Sheep	...	150
	...	3,613
Dealers and Speculators:		
Cattle	...	630
Calves	...	12
Hogs	...	213
	...	855
Total Selling	307	16,527

Buying

Straight Cars:		
Cattle and Calves	314	8,863
Sheep	4	1,134
	318	9,997
Drive-Outs and Truck-Outs:		
Cattle	...	347
Sheep	...	10
	...	357
Total Buying	318	10,354

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 45

TAGG BROS. & MOORHEAD, RICHARD M. LAVERTY, ENGAGED IN BUSINESS UNDER THE NAME AND STYLE OF LAVERTY BROS.; WILL H. WOOD ET AL., ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, WILLIAM M. JARDINE, AS SECRETARY OF AGRICULTURE; JOHN G. SARGENT, ATTORNEY GENERAL, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA

FILED MARCH 1, 1929

(34,047)

(34,047)

SUPREME COURT OF THE UNITED STATES

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VOL. II

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[fol. 638] Exhibit 39

Auditor's Report Year Ended December 31, 1925

Firm No. 33

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank	$3,142.35		
Accounts Receivable	63.17		
Total Current Assets		$3,205.52	
Fixed:			
Memberships	6,000.00		
Office and Operating Equipment	1,540.00		
Total Fixed Assets		7,540.00	
Deferred		13.78	
Total Assets			$10,759.30

Liabilities and Net Worth

Current Liabilities:			
Accounts Payable (Yard Co.)	$65.71		
Other	.10		
Total Current Liabilities		$65.81	
Net Worth:			
Capital	9,540.00		
Undivided Profits	1,153.49		
Total Net Worth		10,693.49	
Total Liabilities and Net Worth			$10,759.30

[fol. 639] Firm No. 33

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank	$2,774.71		
Accounts Receivable	362.73		
Total Current Assets		$3,137.44	

Fixed:			
Memberships	6,000.00		
Office & Operating Equipment	1,540.00		
Total Fixed Assets		7,540.00	
Deferred		48.54	
Total Assets			$10,725.98

Liabilities and Net Worth

Current Liabilities:			
Proceeds Payable (Held a/c Brands)	$804.92		
Accounts Payable (Other)	51.36		
Total Current Liabilities		$856.28	
Net Worth:			
Capital	9,540.00		
Undivided Profits	329.70		
Total Net Worth		9,869.70	
Total Liabilities and Net Worth			$10,725.98

[fol. 640] Firm No. 33

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$18,255.25		
Buying Commissions	394.45		
		$18,649.70	
Split Commissions Received		140.14	
Total Operating Income			$18,789.84
Expenses:			
Non-Owners' Salaries:			
Salesmen	7,600.00		
Yardmen	1,625.00		
Extra Help	39.00		
Commissions Paid as Salary	75.90		
Total Salaries		9,339.90	
Travel and Entertainment	438.15		
Advertising	2,179.07		
Rent	357.50		
Telephone & Telegraph	159.08		
Stationery & Office Expense	134.72		
General Postage	201.00		
Charity and Donations	20.00		

Taxes	19.95		
Bond Premiums	41.00		
Exchange Assessments and Dues	303.43		
Meals	15.25		
Errors and Adjustments	16.17		
Miscellaneous	122.54		
		4,006.86	
Total Operating Expenses			13,346.76
Net Operating Profit			$5,443.08

[fol. 641] Firm No. 33

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924			$10,693.49
Additions:			
Net Gain	$5,443.08		
Other	38.17		
		5,481.25	
Total			16,174.74
Deductions:			
Withdrawals	6,205.04		
Other	100.00		
		6,305.04	
Net Worth December 31, 1925			$9,869.70

[fol. 642] Firm No. 33

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Non-Owners:			
Salesmen:			
*#1 Cattle, Full time	$2,400.00		
#2 " 2 Months	400.00		
#3 Hog, Full year	2,400.00		
#4 " " "	2,400.00		
		$7,600.00	
Yardmen:			
*#5 Cattle, 10 Months	1,500.00		
#6 General, 1 "	125.00		
		1,625.00	
Extra Help		39.00	

*1 and 5 devote approximately one half of their time to office work.

Commissions Paid as Salary:			
Sheep	41.60		
Truck Hog	34.30		
		75.90	
Total Salaries			$9,339.90

[fol. 643] Firm No. 33

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves	$5,642.21		
Hogs	5,470.44		
Sheep	14.00		
		$11,126.65	
Mixed Cars		2,406.85	
Drive-Ins and Truck-Ins:			
Cattle	982.10		
Calves	299.60		
Hogs	2,044.77		
Sheep	25.25		
		3,351.72	
Speculators and Dealers:			
Cattle and Calves	1,194.75		
Hogs	175.28		
		1,370.03	
Total Selling Commissions			$18,255.25

Buying

Straight Cars:			
Cattle and Calves	326.50		
Sheep	14.00		
		340.50	
Drive-Outs and Truck-Outs:			
Cattle	8.00		
Calves	20.35		
Hogs	6.00		
Sheep	1.80		
		36.15	
Speculators and Dealers:			
Cattle		17.80	
Total Buying Commissions			$394.45

[fol. 644] Firm No. 33

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	Cars	Head
Straight Cars:		
Cattle and Calves	288	7,704
Hogs	372	27,130
Sheep (D. D. 3)	1	98
	661	34,932
Mixed Cars:		
Cattle and Calves, Hogs, Sheep	128	1,228 Cattle and Calves; 6,257 Hogs; 115 Sheep
	128	7,600
Drive-Ins and Truck-Ins:		
Cattle	...	1,226
Calves	...	752
Hogs	...	7,342
Sheep	...	125
	...	9,445
Speculators and Dealers:		
Cattle and Calves	...	3,142
Hogs	...	1,842
		4,984
Total Selling	789	56,961

Buying

Straight Cars:		
Cattle and Calves	21	716
Sheep	1	107
	22	823
Drive-Outs and Truck-Outs:		
Cattle	...	13
Calves	...	49
Hogs	...	30
Sheep	...	9
	...	101
Speculators and Dealers:		
Cattle	...	52
Total Buying	22	976

[fol. 645] Exhibit 40

Auditor's Report, Year Ended December 31, 1925

Firm No. 34

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:				
Cash on Hand	$218.90			
Cash in Bank (General)	7,716.13			
		$7,935.03		
Accounts Receivable		92,993.83		
Notes Receivable	70,693.26			
Notes Receivable—Discounted	59,628.58			
		11,064.68		
Stocks		300.00		
Total Current Assets			$112,293.54	
Fixed:				
Memberships		5,000.00		
Office & Operating Equipment		2,250.00		
Total Fixed Assets			7,250.00	
Total Assets				$119,543.54

Liabilities and Net Worth

Current:			
Proceeds Payable	$4,300.00		
Estray Account	72.34		
Accounts Payable (Yard Co.)	1,586.04		
Accounts Payable (Other)	156.88		
Accrued Interest	239.26		
Total Current Liabilities		$6,354.52	
Net Worth:			
Capital	10,000.00		
Surplus	103,189.02		
Net Worth		113,189.02	
Total Liabilities and Net Worth			$119,543.54

[fol. 646]

Firm No. 34

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$203.09		
Cash in Bank (General)	5,345.41		
		$5,548.50	
Accounts Receivable		1,577.26	
Notes Receivable	113,449.81		
Less Notes Receivable Discounted	113,449.81		
Stocks		300.00	
Total Current Assets			$7,425.76
Fixed:			
Membership		15,000.00	
Office & Operating Equipment		2,250.00	
Total Fixed Assets			17,250.00
Total Assets			$24,675.76

Liabilities and Net Worth

Current:			
Proceeds Payable		$1,200.00	
Accounts Payable (Yard Co.)		1,345.83	
Accounts Payable (Other)		69.07	
Estrays		245.68	
Total Current Liabilities			$2,860.58
Net Worth:			
Capital		10,000.00	
Surplus		11,815.18	
Net Worth			21,815.18
Total Liabilities and Net Worth			$24,675.76

[fol. 647]

Firm No. 34

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$51,346.07		
Buying Commission	5,536.00		
		$56,882.07	
Miscellaneous Income		872.45	
Gross Income		57,754.52	
Less Deductions		21.65	
Total Operating Income			$57,732.87

Expenses:

Non-Owners' Salaries:

Salesmen	16,920.00		
Order Buyer	3,600.00		
Yardmen	5,205.00		
Office	7,680.00		
Extra Help	182.00		
Commission paid as Salary	512.95		
Total Salaries		34,099.95	
Bonuses Paid	2,110.00		
Travel & Entertainment	1,875.26		
Advertising	4,814.93		
Rent	840.00		
Telephone & Telegraph	530.08		
Stationery & Office Expense	903.66		
General Postage	393.37		
Charity and Donations	353.70		
Horse & Saddle	333.10		
Insurance	386.30		
Taxes	134.71		
Bond Premiums	104.50		
Exchange Assessment and Dues	777.34		
Meals	229.80		
Errors and Adjustments	105.35		
Miscellaneous	462.07		
Total General Expense		14,354.17	
Total Operating Expense			48,454.12
Net Operating Profit			9,278.75
Other Income			20.36
			9,299.11
Other Deductions			49.45
Net Gain			$9,249.66

[fol. 648] Firm No. 34

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$113,189.02
Additions:		
Net Gain	$9,249.66	
Appreciation of Assets	10,000.00	
		19,249.66
		132,438.68

Deductions:

Rent Prior year paid in 1925	70.00	
Uncollectable Accounts Receivable	108,000.00	
Advances	2,000.00	
Operating Equipment Charge	433.50	
Outside Salaries	120.00	
		110,623.50
Net Worth December 31, 1925		$21,815.18

[fol. 649] Firm No. 34

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Non-Owners' Salaries:

Salesmen:		
#1 Cattle, full time	$4,400.00	
#2 " " "	4,000.00	
#3 " " "	1,800.00	
#4 Hog " "	4,200.00	
#5 " " "	2,520.00	
Total Salesmen Salaries		$16,920.00
Buyer:		
#6 Feeder Buyer (Cattle), full time		3,600.00
Yardmen:		
#7 Cattle, full time	1,875.00	
#8 " " "	1,650.00	
#9 Hog " "	1,680.00	
Total Yardmen Salaries		5,205.00
Office:		
#10 Full time	4,200.00	
#11 " "	1,800.00	
#12 " "	1,680.00	
Total Office		7,680.00
Extra Help:		
Office, Various	140.00	
Yards, "	42.00	
Total Extra Help		182.00
Commission Paid as Salary:		
½ Commission paid as Salaries (Sheep)		512.95
		$34,099.95

[fol. 650] Firm No. 34

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves	$18,801.29		
Hogs	10,534.75		
Sheep	188.30		
		$29,524.34	
Mixed Cars		2,435.22	
Drive-Ins and Truck-Ins:			
Cattle	4,253.33		
Calves	575.08		
Hogs	9,687.46		
Sheep	402.85		
		14,918.72	
Yard Sales:			
Cattle	1,195.79		
Hogs	3,257.78		
		4,453.57	
		51,331.85	
Add Unlocated Difference		14.22	
Total Selling			$51,346.07

Buying

Straight Cars:			
Cattle and Calves	$4,108.00		
Sheep	367.00		
		$4,475.00	
Drive-Outs and Truck-Outs:			
Cattle	994.70		
Calves	2.40		
Sheep	45.20		
		1,042.30	
		5,517.30	
Add Unlocated Difference		18.70	
Total Buying			$5,536.00

[fol. 651] Firm No. 34

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

	Cars		
	S. D.	D. D.	Head
Selling			
Straight Cars:			
Cattle and Calves	1,020	....	26,886
Hogs	674	29	49,240
Sheep	2	7	1,967
	1,696	36	78,093
Mixed Cars:			
Cattle, Calves, Hogs, Sheep	129	....	1,558 / 31 / 4,794 / 187
	129	....	6,570
Drive-Ins and Truck-Ins:			
Cattle	.....	....	5,413
Calves	.....	....	1,426
Hogs	.....	....	35,428
Sheep	.....	....	2,237
	.....	....	44,504
Yard Sales:			
Cattle	.....	....	3,072
Hogs	.....	....	31,934
	.....	....	35,006
Total Selling	1,825	36	164,173
Buying			
Straight Cars:			
Cattle & Calves	255	....	8,916
Sheep	6	14	4,473
	261	14	13,389
Drive-Outs and Truck-Outs:			
Cattle	.....	....	1,807
Calves	.....	....	6
Sheep	.....	....	371
	.....	....	2,184
Total Buying	261	14	15,573

[fol. 652] Ex. 41

Auditor's Report, Year Ended December 31, 1925

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash in Bank	$3,517.72		
Accounts Receivable	1,652.11		
Notes Receivable	910.83		
Total Current Assets		$6,080.66	
Total Assets			$6,080.66
Liabilities and Net Worth			
Current:			
Accounts Payable (Yard Co.)	$339.70		
Accounts Payable (Other)	621.34		
Total Current Liabilities		$961.04	
Net Worth:			
Capital		5,119.62	
Total Liabilities and Net Worth			$6,080.66

[fol. 653] Firm No. 35

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets			
Current:			
Cash in Bank (General)	$3,360.68		
Cash in Bank (Proceeds)	2,328.14		
		$5,688.82	
Accounts Receivable		1,530.65	
Notes Receivable		910.83	
Total Current Assets		$8,130.30	
Total Assets			$8,130.30
Liabilities and Net Worth			
Current:			
Proceeds Payable	$1,850.86		
Accounts Payable (Yard Co.)	1,206.17		
Accounts Payable (Other)	344.00		
Total Current Liabilities		$3,401.03	
Net Worth:			
Capital		4,729.27	
Total Liabilities and Net Worth			$8,130.30

[fol. 654]

Firm No. 35

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$24,089.75	
Buying Commission		469.75	
Total Operating Income			$24,559.50
Expenses:			
Owners' Salaries:			
Salesmen	$6,000.00		
Total Owners' Salaries	$6,000.00		
Non-Owners' Salaries:			
Salesmen	6,037.50		
Yardmen	2,130.00		
Office	2,010.00		
Extra Help	140.00		
Commission Paid as Salary	76.45		
Total Non-Owner Salaries	10,393.95		
Total Salaries		16,393.95	
Bonuses Paid		600.00	
Travel & Entertainment		503.21	
Advertising		1,114.50	
Rent		390.00	
Telephone & Telegraph		225.89	
Stationery & Office Supplies		150.38	
General Postage		87.98	
Charity & Donations		126.74	
Insurance		107.73	
Taxes		39.23	
Bond Premiums		47.00	
Exchange Assessments & Dues		324.20	
Meals		56.20	
Miscellaneous		89.28	
Total General Expense		3,862.34	
Total Operating Expense			20,256.29
Net Gain			$4,303.21

[fol. 655] Firm No. 35

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924	$5,119.62
Additions:	
Net Gain	4,303.21
	9,422.83
Deduct:	
Net Withdrawals	4,693.56
Net Worth December 31, 1925	$4,729.27

[fol. 656] Firm No. 35

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1

Owners' Salaries:			
#1 Salesman		$6,000.00	
Total Owner's Salaries			$6,000.00
Non-Owner's Salaries:			
Salesmen			
#2 Cattle	Full Time	2,250.00	
#3 "	3½ Mos.	787.50	
#4 Hog	Full Time	3,000.00	
Total Salesmen Salaries			6,037.50
Yardmen:			
#5	Full Time	2,130.00	
Total Yardmen Salaries			2,130.00
Office:			
#6	Full Time	2,010.00	
Total Office			2,010.00
Extra Help:			
Yard			140.00
Commission Paid as Salary:			
1/2 Commission for Selling Sheep			76.45
Total Non-Owner's Salaries			10,393.95
Total Salaries			$16,393.95

[fol. 657]

Firm No. 35

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars:			
Cattle & Calves	$8,991.43		
Hogs	7,272.89		
Sheep	65.70		
		$16,330.02	
Mixed Cars		3,439.62	
Drive-Ins and Truck-Ins:			
Cattle	765.05		
Calves	174.75		
Hogs	2,861.82		
Sheep	9.40		
		3,811.02	
Dealer and Speculator Sales:			
Cattle	86.00		
Calves	3.40		
Hogs	414.12		
		503.52	
Unlocated Difference		5.57	
Total Selling			$24,089.75

Buying

Straight Cars:			
Cattle & Calves	$438.75		
Hogs	15.00		
Sheep	14.00		
		467.75	
Drive-Outs and Truck-outs:			
Cattle		2.00	
Total Buying			469.75

[fol. 658] Firm No. 35

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

	Selling		
	No. Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	484	....	12,209
Hogs	491	....	34,767
Sheep	3	1	457
	978	1	47,433
Mixed Cars:			
Cattle & Calves / Hogs / Sheep	179	....	2,112 / 7,467 / 300
	179	....	9,879
Drive-In and Truck-Ins			
Cattle	.....	....	958
Calves	.....	....	439
Hogs	.....	....	10,249
Sheep	.....	....	47
			11,693
Dealer and Speculator:			
Cattle	.....	....	215
Calves	.....	....	17
Hogs	.....	....	4,208
			4,440
Total Selling	1,157	1	73,445
	Buying		
Straight Cars:			
Cattle & Calves	29	....	901
Hogs	1	....	75
Sheep	1	....	150
	31	....	1,126
Drive-Outs and Truck-Outs:			
Cattle	.....	....	2
Total Buying	31	....	1,128

[fol. 659] Ex. 42

Auditor's Report Year ended December 31, 1925

Firm No. 36

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

Current:		
Cash in Bank	$5,340.80	
Proceeds Receivable	14.20	
Total Current Assets		$5,355.00
Total Assets		$5,355.00

Liabilities and Net Worth

Current:		
Accts. Payable—Yard Co.	$127.97	
" " —Others	3,468.39	
	$3,596.36	
Total Current Liabilities		$3,596.36
Net Worth:		
Capital		1,758.64
Total Liabilities and Net Worth		$5,355.00

[fol. 660] Firm No. 36

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit D

Assets

Current:		
Cash—General Acct.	$1,048.41	
Cash—Proceeds Acct.	546.58	
	$1,594.99	
Total Current Assets		$1,594.99
Fixed:		
Membership	5,000.00	
Office & Operating Equipment	275.00	
Total Fixed Assets		5,275.00
Total Assets		$6,869.99

Liabilities and Net Worth

Current:

Accounts Payable—Yard Co..	$68.21	
" " —Others ...	704.72	
		$722.93
Total Current Liabilities		$ 772.93

Net Worth:

Capital	2,240.96	
Profit—1925	3,856.10	
Total Net Worth		6,097.06
Total Liabilities and Net Worth		$6,869.99

[fol. 661] Firm No. 36

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C

Income:

Selling Commissions	$2,846.85		
Buying Commissions	2,134.64		
		$4,981.49	
Split Commission Received		2,761.08	
Miscellaneous		327.68	
Total Operating Income			$8,070.25

Expenses:

Non-Owner's Salaries			
Yardmen	1,725.00		
Office	575.00		
Extra Help	394.50		
Total Salaries		2,694.50	
Split Commission paid		70.86	
Advertising		157.44	
Stationery and Office supplies		79.20	
Exchange Assessment and Dues.....		60.82	
Telephone and Telegraph		120.82	
Rent		420.00	
Meals		362.75	
General Postage		5.00	
Bond		55.00	
Charity and Donations		12.50	
Unexplained		2.72	
Miscellaneous		172.54	
Total Expenses			4,214.15
Net Profits			$3,856.10

[fol. 662]

Firm No. 36

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$1,758.64
Additions:		
Membership	$5,000.00	
Furniture & Fixtures	275.00	
Adjustment—Yardage acct. 1924	30.28	
" —Freight " "	.48	
" —Collection " "	.14	
Profit Year 1925	3,856.10	
		9,162.00
		10,920.64
Deductions:		
Withdrawals		4,823.58
Net Worth December 31, 1925		$6,097.06

[fol. 663]

Firm No. 36

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Non-Owners' Salaries:		
(*) No. 1 Sheep Yardman—Full time	$1,725.00	
(*) No. 2 Office " "	575.00	
Extra Help—Various	394.50	
Total		$2,694.50

[fol. 664]

Firm No. 36

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Hogs	$13.35	
Sheep	1,171.55	
		$1,184.90
Mixed Cars		76.95
Drive-ins and Truck-ins:		
Cattle	1.60	
Calves	.40	
Hogs	5.60	
Sheep	1,220.08	
		1,227.68

(*) 25% of Yardman's Salary to office.

Speculator—Yard Sales:			
Hogs	.90		
Sheep	354.55		
		355.45	
Add Unlocated Difference		1.87	
Total Selling			$2,846.85

Buying

Straight Cars:			
Cattle & Calves	75.00		
Hogs	12.00		
Sheep	1,519.80		
		1,606.80	
Drive-outs and Truck-outs:			
Sheep		521.30	
Yard Purchases:			
Sheep		25.70	
		2,153.80	
Less Unlocated Difference		19.16	
Total Buying			$2,134.64

[fol. 665] Firm No. 36

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars	No. Head
Straight Cars:		
Hogs	1	59
Sheep & Goats	64	11,299
	65	11,358
Mixed Cars:		
Hogs / Sheep & Goats	4	89 / 446
	4	535
Drive-ins and Truck-ins:		
Cattle	....	2
Calves	....	1
Hogs	....	20
Sheep & Goats	....	9,656
	....	9,679

	No. Cars	No. Head
Yard Sales:		
Hogs	....	3
Sheep	....	5,543
	....	5,546
Total Selling	69	27,118
Buying		
Straight Cars:		
Cattle & Calves	4	142
Hogs	2	163
Sheep & Goats	85	19,017
	91	19,322
Drive-outs and Truck-outs:		
Sheep	....	5,065
Yard Purchases:		
Sheep	....	361
Total Buying	91	24,748

[fol. 666] Ex. 48.

Auditor's Report Year Ended December 31, 1925

Firm No. 37

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

	Assets		
Current:			
Cash on hand	$383.65		
Cash in bank	97.23		
	$480.88		
Accounts Receivable	4,011.62		
Notes Receivable	392.10		
Total Current Assets		$4,884.60	
Fixed:			
Office & Operating Equipment	1,500.00		
Total Fixed Assets		1,500.00	
Deferred		1,257.21	
Total Assets			$7,641.81

Liabilities and Net Worth

Current:			
Accts. Payable—Yard Co.	1,346.08		
" " —Other	310.33		
Total Current Liabilities		1,656.41	
Net Worth:			
Capital	5,985.40		
Total Net Worth		5,985.40	
Total Liabilities and Net Worth			$7,641.81

[fol. 667] Firm No. 37

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Proceeds Bank Account	$207.89		
Accounts Receivable	818.54		
Total Current Assets		$1,026.43	
Fixed:			
Membership	3,500.00		
Office & Operating Equipment	1,500.00		
Total Fixed Assets		5,000.00	
Deferred		160.28	
Total Assets			6,186.71

Liabilities and Net Worth

Current:			
Overdraft—Gen'l Bank Acct.		$201.60	
Accts. Payable—Yard Co.	$818.63		
" " —Others	333.50		
		1,152.13	
Total Current Liabilities		$1,353.73	
Net Worth:			
Capital	4,722.97		
Profit, 1925	110.01		
Total Net Worth		4,832.98	
Total Liabilities and Net Worth			$6,186.71

[fol. 668] **Firm No. 37**

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$13,016.43	
Buying Commissions		2,378.35	
Gross Income		15,394.78	
Less Deductions		23.25	
Total Operating Income			$15,371.53
Expenses:			
Owners' Salaries:			
Salesmen	$4,080.00		
Non-Owners' Salaries:			
Salesmen	2,430.00		
Yardmen	2,190.00		
Office	2,015.00		
Extra Help	7.00		
Com. paid as Salary	151.80		
Total Salaries		10,873.80	
Advertising		1,585.46	
Bonuses paid		10.00	
Travel & Entertainment		335.03	
Rent		660.00	
Telephone & Telegraph		481.19	
Charity & Donations		4.00	
Exchange Assessment & Dues		225.09	
Insurance		20.00	
Stationery & Office Supplies		360.82	
Horse & Saddle		64.80	
Bond		18.00	
Meals		17.25	
Legal and Auditing		100.00	
Taxes		19.89	
Unexplained		15.11	
General Postage		14.00	
Miscellaneous		322.71	
Total Operating Expenses			15,127.15
Net Operating Profit			244.38
Other Income:			
Sundry item			51.75
			296.13
Other Deductions:			
Interest			186.12
Net Profit			$110.01

[fol. 669] Firm No. 37

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$5,985.40
Additions:		
Adjustment—Membership	$3,500.00	
" —Yard Account	218.28	
Profit for year 1925	110.01	
		3,828.29
		9,813.69
Deductions:		
Federal Taxes—1924	68.81	
Miscl. Expenses 1924	3.00	
Old notes charged off	392.10	
Accounts charged off (Prior)	2,571.53	
Adjustment feed account	205.82	
" Freight "	106.09	
" Truck "	12.29	
Drawings	1,621.07	
		4,980.71
Net Worth December 31, 1925		$4,832.98

[fol. 670] Firm No. 37

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1

Owner's Salary:				
#1 Cattle Salesman	Full time			$ 4,080.00
Non-Owner's Salaries:				
Salesmen:				
#2 Cattle	4½ Mos.	$ 650.00		
#3 "	" "	100.00		
#4 Hog	Full time	1,680.00		
Total Salesmen Salaries			$2,430.00	
Yardmen:				
#5 Cattle	Full time	1,140.00		
#6 "	6 Mos.	150.00		
#7 Hog	(½ time)—12 "	900.00		
Total Yardmen Salaries			2,190.00	

Office:			
#8 Bookkeeper (½ time)—12 Mos.....	900.00		
#9 Stenographer 10¾ Mos.	150.00		
Total Office Salaries		2,015.00	
Extra Help: **Various**		7.00	
Commission paid as salary.....		151.80	
Total Non-Owner's Salaries			6,793.80
Total Salaries			$10,873.80

[fol. 671]

Firm No. 37

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars:			
Cattle & Calves	$7,115.46		
Hogs	2,313.48		
Sheep	40.00		
		$9,468.94	
Mixed Cars:		631.69	
Drive-Ins and Truck-Ins:			
Cattle	714.15		
Calves	53.60		
Hogs	1,234.79		
Sheep	41.00		
		2,043.54	
Dealers and Speculators:			
Cattle & Calves.....	865.70		
Hogs	7.65		
		871.26	
Add Unlocated Difference.....		1.00	
Total Selling.....			$13,016.43

Buying

Straight Cars:			
Cattle & Calves.....	2,118.75		
Hogs	15.00		
Sheep	80.00		
		2,213.75	
Drive-Outs and Truck-Outs:			
Cattle	148.20		
Calves	2.40		
Sheep	14.00		
		164.60	
Total Buying			$2,378.35

[fol. 672] Firm No. 37

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

Selling

	Cars	Head
Straight Cars:		
Cattle & Calves	388	9,367
Hogs	156	11,449
Sheep	4	467
	548	21,283
Mixed Cars:		
Cattle & Calves / Hogs	35	443 / 1,323
	35	1,766
Drive-Ins and Truck-Ins:		
Cattle	....	924
Calves	....	134
Hogs	....	4,487
Sheep	....	205
		5,750
Dealers and Speculators:		
Cattle and Calves	....	1,911
Hogs	....	27
	....	1,938
Total Selling	....	30,737

Buying

Straight Cars:		
Cattle & Calves	138	4,002
Hogs	1	85
Sheep	8	1,104
	147	5,191
Drive-Outs and Truck-Outs:		
Cattle	....	203
Calves	....	6
Sheep	....	70
		279
Total Buying	147	5,470

[fol. 673] Ex. 44

Auditor's Report Year Ended December 31, 1925

Firm No. 38

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit "A"

Assets

Current:			
Cash on hand	285.01		
Cash in bank	19,723.03		
		20,008.04	
Proceeds Receivable		13,081.89	
Accounts Receivable		980.22	
Total Current Assets			34,070.15
Fixed:			
Membership		8,000.00	
Office & Operating Equipment		2,000.00	
Total Fixed Assets			10,000.00
Deferred:			231.73
Total Assets			44,301.88

Liabilities

Current:			
Proceeds Payable		11,186.26	
Accts Payable—Yard Co.	2,935.92		
" " —Other	565.30		
		3,501.22	
Notes Payable		15,000.00	
Accrued Liabilities		483.53	
Total Current Liabilities			30,171.01
Net Worth:			
Capital			14,130.87
Total Liabilities and Net Worth			44.301.88

[fol. 674] Firm No. 38

South Omaha, Nebraska

Balance Sheet as of December 31, 1925

Exhibit "B"

Assets

Current:			
Cash on hand	$ 306.95		
Cash in Bank—General	4,301.23		
Cash in Bank—Proceeds	5,013.05		
		$ 9,621.23	
Accounts Receivable		92.00	
Total Current Assets			$ 9,713.23
Fixed:			
Membership		8,000.00	
Office & Operating Equipment		1,210.00	
Total Fixed Assets			9,210.00
Deferred:			209.14
Total Assets			$19,132.37

Liabilities

Current:			
Proceeds Payable		$ 2,141.32	
Accts. Payable—Yard Co.	$2,890.03		
Accts. Payable—Other	2,016.19		
		5,506.22	
Accrued Liabilities		274.59	
Total Current Liabilities			$7,922.13
Net Worth:			
Capital		11,210.24	
Total Net Worth			11,210.24
Total Liabilities and Net Worth			$19,132.37

[fol. 675] Firm No. 38

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$44,898.86	
Buying Commission		1,428.75	
			$46,327.61
Miscellaneous Income			1,800.00
Total Operating Income			$48,127.61

Expenses:

Owners' Salaries:			
Salesman		7,200.00	
Non-Owners' Salaries:			
Salesmen	$12,944.96		
Order Buyer	400.00		
Yardmen	5,402.50		
Office	4,435.00		
Extra Help	117.00		
		23,299.46	
Total Salaries			30,499.46
Travel & Entertainment		3,367.66	
Advertising		3,717.21	
Rent		930.00	
Telephone & Telegraph		639.83	
Stationery & Office Expense		521.07	
General Postage		192.00	
Charity		170.87	
Horse & Saddle		18.00	
Insurance		10.38	
Taxes		80.60	
Bond Premium		88.16	
Exchange Assessments & Dues		578.72	
Meals		46.55	
Depreciation		400.00	
Errors & Adjustments		39.18	
Miscellaneous		937.87	
			11,738.10
Total Operating Expenses			42,237.56
Net Operating Profit			5,890.05
Other Deductions:			
Interest & Other			1,070.46
Net Gain			$4,819.59

[fol. 676] Firm No. 38

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth as of December 31, 1924		$14,130.87
Additions:		
Net Gain Year 1925		4,819.59
		18,950.46
Deductions:		
Personal Withdrawals	$6,167.38	
Employees 5% of 1924 Profits	668.27	
Income Tax	904.57	
		7,740.22
Net Worth as of December 31, 1925		$11,210.24

[fol. 677] Firm No. 38

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule #1.

Owners' Salary:				
A.	#1.	Salesman, Hog—Full Time		$7,200.00
Non-Owners' Salaries:				
Salesmen:				
	#2.	Cattle—8½ Mos.	$3,430.00	
	#3.	Cattle—3½ Mos.	1,339.71	
B.	#4.	Cattle—Full Time	3,175.25	
	#5.	Sheep— " "	5,000.00	
		Total Salesmen		$12,944.96
	#6.	Order Buyer		400.00
Yardmen:				
	#7.	Cattle—5 Mos.	625.00	
C.	#8.	Cattle—3½ Mos.	202.50	
	#9.	Hog—Full time	2,400.00	
D.	#10.	Hog " "	1,800.00	
	#11.	Hog—3 Mos.	375.00	
		Total Yardmen		5,402.50
Office:				
	#12.	Bookkeeper—Full time	3,000.00	
	#13.	Stenographer—8½ Mos.	1,125.00	
	#14.	Stenographer—3½ Mos.	310.00	
		Total Office		4,435.00
		Extra Help		117.00
		Total Non-Owners' Salaries		23,299.46
		Total Salaries		$30,499.46

A. ⅔ Time Hog Salesman, ⅓ Time Office.
B. ¾ Time Cattle Salesman, ¼ Time Soliciting.
C. ⅔ Time Cattle Yardman, ⅓ Time Hog Yardman.
D. 75% Time Hog Yardman, 15% Cattle Yardman, 10% Sheep Yardman.

[fol. 678] Firm No. 38

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle and Calves	$11,024.54	
Hogs	18,440.56	
Sheep	6,840.80	
		$36,305.90
Mixed Cars		4,779.14

Drive-ins and Truck-ins:

Cattle	249.40		
Calves	44.95		
Hogs	1,019.62		
Sheep	129.00		
		1,442.97	
Dealers and Speculators:			
Cattle and Calves	1,131.05		
Hogs	1,162.00		
Sheep	77.80		
		2,370.85	
Total Selling			$44,898.86

Buying

Straight Cars:

Cattle and Calves	1,176.65		
Sheep	245.60		
		1,422.25	
Drive-outs and Truck-outs:			
Cattle	2.00		
Dealers and Speculators:			
Cattle		4.50	
Total Buying			$1,428.75

[fol. 679] Firm No. 38

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	Double deck.	Single deck	Head
Straight Cars:			
Cattle and Calves	.....	580	15,007
Hogs	152	1,040	94,054
Sheep	329	15	86,299
	481	1,635	195,360
Mixed Cars:			
Cattle and Calves / Hogs / Sheep	.....	252	2,156 / 12,290 / 558
	.....	252	15,004
Truck-ins and Drive-ins:			
Cattle	.....	....	312
Calves	.....	....	120
Hogs	.....	....	3,639
Sheep	.....	....	1,146
	.....	....	5,217

	Cars		
	Double deck.	Single deck	Head
Speculators and Dealers:			
Cattle and Calves	.....	....	2,165
Hogs	.....	....	12,271
Sheep	.....	....	1,852
	.....	....	16,288
Total Selling	481	1,887	231,869
Buying			
Straight Cars:			
Cattle and Calves	...	78	2,363
Sheep	9	3	3,303
	9	81	5,666
Truck-Outs and Drive-Outs:			
Cattle	...	....	2
Speculators and Dealers:			
Cattle	...	....	6
Total Buying	9	81	5,674

[fol. 680] Exhibit 45.

Auditor's Report Year Ended December 31, 1925.

Firm No. 39

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

	Assets		
Current:			
Cash on Hand	$250.00		
Cash in Bank	2,856.83		
		$3,106.83	
Proceeds Receivable		5,764.80	
Accounts Receivable		966.06	
Other Stocks, Bonds & Inv.		500.00	
Miscellaneous		15,775.07	
Total Current Assets			$26,112.76
Fixed:			
Memberships		1,700.00	
Office & Operating Equipment		3,728.70	
Total Fixed Assets			5,428.70
Deferred			137.50
Total Assets			$31,678.96

Liabilities and Net Worth

Current:		
Accounts Payable (Other)	$16,175.81	
Total Current Liabilities		$16,175.81
Net Worth:		
Capital		15,503.15
Total Liabilities and Net Worth		$31,678.96

[fol. 681]

Firm No. 39

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

	Assets		
Current:			
Cash on Hand	250.00		
Cash in Bank—Shippers Pro.	1,910.14		
Cash in Bank—Gen. Acct.	11.04		
		$2,171.18	
Proceeds Receivable		2,275.09	
Accounts Receivable		2,220.79	
Other Stocks, Bonds & Inv.		500.00	
Miscellaneous		12,062.57	
Total Current Assets			$19,229.63
Fixed:			
Memberships		1,700.00	
Office & Operating Equip.	4,407.67		
Less Depreciation	627.51		
		3,780.16	
Total Fixed Assets			5,480.16
Total Assets			$24,709.79

Liabilities and Net Worth

Current:			
Estray Account		$3,922.00	
Accounts Payable (Other)		13,128.60	
Accrued Liabilities		508.81	
Total Current Liabilities			17,559.41
Net Worth:			
Capital		7,501.54	
Less Profit & Loss Acct.—Debit		351.16	
Total Net Worth			7,150.38
Total Liabilities and Net Worth			$24,709.79

[fol. 682] Firm No. 39

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$106,934.27		
Buying Commissions	4,051.48		
		$110,985.75	
Miscel. Income—Com. not on Acct. Sales		9.80	
		110,995.55	
Less Deductions—Errors in Commissions		35.10	
Total Operating Income			$110,960.45
Expenses:			
Owners Salaries:			
Salesmen	18,300.00		
Non-Owners Salaries:			
Salesmen	$8,450.00		
Order Buyers	3,600.00		
Solicitors	3,600.00		
Yardmen	9,803.70		
Office	6,105.00		
Extra Help	1,589.00		
Commission Paid as Salary	303.80		
Other—Brand Man	2,500.00		
	35,951.50		
Total Salaries		54,251.50	
Bonuses Paid	4,915.00		
Travel & Entertainment	5,493.68		
Advertising	18,193.05		
Rent	1,650.00		
Telephone & Telegraph	1,189.85		
Stationary & Office Expense	1,754.33		
General Postage	881.17		
Charity & Donations	429.00		
Horse & Saddle	1,376.75		
Insurance	1,444.21		
Taxes	30.50		
Bond Premiums	102.00		
Exchange Assessments & Dues	1,456.59		
Legal & Auditing	115.00		
Meals	209.15		
Depreciation	627.51		
Errors & Adjustments	145.32		
Miscellaneous	896.17		
		40,909.48	
Total Operating Expense			95,160.98
Net Operating Profit			15,799.47

Other Expense:	
Interest Paid	7.47
Net Gain	$15,792.00

[fol. 683] Firm No. 39

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$15,503.15
Additions:		
Net Gain	$15,792.00	
Other	1,730.37	
		17,522.37
Total		33,025.52
Deductions:		
Other		25,875.14
Net Worth, December 31, 1925		$7,150.38

[fol. 684] Firm No. 39

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners Salaries:				
#1.	Cattle Salesman	5 Mo.	$3,000.00	
#2.	Cattle Salesman	12 Mo.	8,100.00	
#3.	Hog Salesman	12 Mo.	7,200.00	
	Total Owners Salaries			$18,300.00
Non-Owners Salaries:				
#4.	Cattle Salesman	12 Mo.	3,950.00	
#5.	Hog Salesman	12 Mo.	2,700.00	
#6.	Hog Salesman	12 Mo.	1,800.00	
	Total Salesmen			8,450.00
#7.	Cattle Order Buyer	12 Mo.	.....	3,600.00
#8.	Solicitor	12 Mo.	.....	3,600.00
#9.	Cattle Yardman	12 Mo.	2,200.00	
#10.	Cattle Yardman	12 Mo.	1,500.00	
#11.	Cattle Yardman	12 Mo.	1,500.00	
#12	Cattle Yardman	3½ Mo.	437.50	
#19.	Cattle Yardman	7½ Mo.	871.20	
#20.	Cattle Yardman	12 Mo.	1,375.00	
#13.	Hog Yardman	12 Mo.	1,920.00	
	Total Yardmen			9,803.70

#14.	Cashier	12 Mo.	2,400.00	
#15.	Office	2 Mo.	300.00	
#21.	Office	4 Mo.	440.00	
#16.	Stenographer	12 Mo.	1,725.00	
#17.	Stenographer	12 Mo.	1,240.00	
	Total Office			6,105.00
	Extra Yard Help		299.00	
	Extra Office Help		1,290.00	
	Total Extra			1,589.00
	Commission Paid as Salary—Sheep			303.80
#18.	Cattle Brand Man	12 Mo.		2,500.00
	Total Non-Owners Salaries			35,951.50
	Total Salaries			$54,251.50

[fol. 685] Firm No. 39

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves	$60,810.88		
Hogs	20,452.34		
Sheep	192.25		
		$81,455.47	
Mixed Cars		8,607.42	
Drive-Ins and Truck-Ins:			
Cattle	3,065.04		
Calves	669.10		
Hogs	6,614.71		
Sheep	171.26		
		10,520.11	
Speculators & Yard:			
Cattle and Calves	4,094.05		
Hogs	1,975.32		
		6,069.37	
		106,652.37	
Add Unlocated Difference		281.90	
Total Selling Commissions			$106,934.27

Buying

Straight Cars:			
Cattle and Calves	$3,704.00		
Hogs	176.00		
Sheep	20.00		
		$3,900.00	

Drive-Outs and Truck-Outs:			
Cattle	$154.45		
Calves	1.60		
Hogs	78.72		
Sheep	11.80		
		246.57	
Speculator and Yard:			
Hogs		42.00	
		4,188.57	
Less Unlocated Difference		137.09	
Total Buying Commissions			$4,051.48

[fol. 686] Firm No. 39

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle and Calves	3,251	..	87,384
Hogs	1,377	25	99,393
Sheep	5	6	1,840
	4,633	31	188,617
Mixed Cars:			
Cattle and Calves, Hogs, Sheep	459	..	4,923 / 19,434 / 702
	459	..	25,059
Drive-Ins and Truck-Ins:			
Cattle	....	..	3,873
Calves	....	..	1,687
Hogs	....	..	23,756
Sheep	....	..	904
			30,220
Speculator and Yard:			
Cattle and Calves	....	..	10,303
Hogs	....	..	19,599
			29,902
Total Selling	5,092	31	273,798

Buying

Straight Cars:			
Cattle and Calves	240	..	7,821
Hogs	7	9	2,077
Sheep	....	1	325
	247	10	10,223

	Cars		
	S. D.	D. D.	Head
Drive-Outs and Truck-Outs:			
Cattle	....	..	279
Calves	....	..	4
Hogs	....	..	407
Sheep	....	..	59
			749
Speculator and Yard:			
Hogs	....	..	325
Total Buying	247	10	11,297

[fol. 687]

EXHIBIT 46

Auditor's Report Year Ended December 31, 1925

Firm No. 40

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash in Bank	$12,240.18	
Proceeds Receivable	2,994.09	
Accounts Receivable	75.00	
Total Current Assets		$15,309.27
Fixed:		
Office and Operating Equipment		2,941.35
Total Assets		$18,250.62

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)	$3,222.29	
Accounts Payable (Other)	70.40	
Total Current Liabilities		$3,292.69
Net Worth:		
Capital	7,200.00	
Undivided Profits	7,757.93	
Total Net Worth		14,957.93
Total Liabilities and Net Worth		$18,250.62

[fol. 688] Firm No. 40

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets		
Current:		
Cash in Bank	$8,324.62	
Accounts Receivable	75.00	
Total Current Assets		$8,399.62
Fixed:		
Office and Operating Equipment		3,962.91
Deferred:		
Subscriptions prepaid		10.62
Total Assets		$12,373.15
Liabilities and Net Worth		
Current:		
Accounts Payable (Yard Co.)	$1,172.05	
Accounts Payable (Other)	56.25	
Total Current Liabilities		$1,228.30
Net Worth:		
Capital	7,200.00	
Undivided Profits	3,944.85	
Total Net Worth		11,144.85
Total Liabilities and Net Worth		$12,373.15

[fol. 689] Firm No. 40

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commission	$34,720.18	
Buying Commission	4,092.40	
	$38,812.58	
Split Commission Received	303.31	
Gross Income	39,115.89	
Less Deductions	24.20	
Total Operating Income		$39,091.69
Expenses:		
Owners' Salaries:		
Salesmen	14,400.00	

Non-Owners' Salaries:			
Salesmen	3,000.00		
Yardmen	4,800.00		
Office	3,075.00		
Extra Help	118.00		
Commission Paid as Salary	48.00		
		11,041.00	
Total Salaries		25,441.00	
Travel and Entertainment	2,139.12		
Advertising	5,738.38		
Rent	792.00		
Telephone and Telegraph	410.05		
Stationery & Office Supplies	593.32		
General Postage.	13.07		
Horse and Saddle	29.50		
Insurance	329.97		
Taxes	70.71		
Bond Premium	53.00		
Exchange Assessments and Dues	483.79		
Meals	36.30		
Errors and Adjustments	8.53		
Unexplained Items	37.15		
Miscellaneous	374.51		
		11,109.40	
Total Operating Expenses:			36,550.40
Net Operating Profit			2,541.29
Other Income:			
Interest			3.68
			2,544.97
Other Deductions:			
Freight—Yard Co			10.71
Net Gain			$2,534.26

[fol. 690] **Firm No. 40**

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924			$14,957.93
Additions:			
Net Gain		$2,534.26	
Miscellaneous		134.82	
			2,669.08
			17,627.01
Deductions:			
Partners' Withdrawals		6,199.17	
Expenses—1924		282.99	
			6,482.16
Net Worth as of December 31, 1925			$11,144.85

[fol. 691]

Firm No. 40

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:				
Salesmen:				
#1 Cattle	Full time			$4,800.00
#2 Hog	" "			4,800.00
#3 Sheep	" "			4,800.00
Total Owners' Salaries				$14,400.00
Non-Owners' Salaries:				
Salesman:				
#4 Cattle	Full time			3,000.00
Yardmen:				
#5 General	" "		$1,800.00	
#6 "	" "		1,500.00	
#7 "	4 Months		600.00	
#8 "	6 "		900.00	
				4,800.00
Office:				
#9 Bookkeeper	Full time		11,800.00	
#10 Stenographer	9 Months		900.00	
#11 "	3¾		375.00	
				3,075.00
Extra Help				118.00
Commission paid as Salary				48.00
Total Non-Owners' Salaries				11,041.00
Total Salaries				$25,441.00

[fol. 692]

Firm No. 40

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$11,787.36	
Hogs	10,696.71	
Sheep	6,392.70	
		$28,876.77
Mixed Cars		3,212.33

Drive-Ins & Truck-Ins:			
Cattle	357.70		
Calves	60.63		
Hogs	789.07		
Sheep	730.59		
		1,937.99	
Dealer and Speculator Sales:			
Cattle & Calves	132.80		
Hogs	530.04		
Sheep	22.22		
		685.06	
		34,712.15	
Add Unlocated Difference		8.03	
Total Selling			$34,720.18

Buying

Straight Cars:			
Cattle & Calves	588.75		
Hogs	828.00		
Sheep	2,616.00		
		4,032.75	
Drive-Outs and Truck-Outs:			
Cattle	11.60		
Calves	12.00		
Sheep	108.20		
		131.80	
		4,164.55	
Less Unlocated Difference		72.15	
Total Buying			$4,092.40

[fol. 693] Firm No. 40

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle & Calves	613	...	16,472
Hogs	659	55	53,484
Sheep	78	264	72,316
	1,350	319	142,272
Mixed Cars:			
Cattle & Calves	174	...	1,744
Hogs	...	...	7,268
Sheep	...	...	1,169
	174	...	10,181

	No. Cars S. D.	No. Cars D. D.	No. Head
Drive-Ins and Truck-Ins:			
Cattle	...	...	472
Calves	...	...	156
Hogs	...	...	2,823
Sheep	...	...	4,224
			7,675
Speculator—Yard Sales:			
Cattle & Calves	...	...	349
Hogs	...	...	5,528
Sheep	...	...	493
			6,370
Total Selling	1,524	319	166,498
Buying			
Straight Cars:			
Cattle & Calves	38	...	1,409
Hogs	12	33	12,166
Sheep	32	106	37,464
	82	139	51,039
Truck-Outs and Drive-Outs:			
Cattle	...	...	13
Calves	...	...	40
Sheep	...	...	541
			594
Total Buying	82	139	51,633

[fol. 694]

Ex. 47

Auditor's Report, Year Ended December 31, 1925

Firm No. 41

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets		
Current:		
Cash in Bank (Shippers Proceeds)	$686.98	
Accounts Receivable	10,623.57	
Total Current Assets		$11,310.55
Deferred:		
Yard Company		1,959.40
Total Assets		$13,269.95

Liabilities and Net Worth

Current:			
Bank Overdraft		$39.54	
Accounts Payable (Yard Co.)	$430.27		
Accounts Payable (Other)	455.15		
		885.42	
Notes Payable		7,000.00	
Total Current Liabilities			$7,924.96
Net Worth:			
Capital			5,344.99
Total Liabilities and Net Worth			$13,269.95

[fol. 695] Firm No. 41

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank (Shippers Proceeds)	$505.73		
Cash in Bank (General)	169.26		
		$674.99	
Accounts Receivable		2,985.08	
Total Current Assets			$3,660.07
Total Assets			$3,660.07

Liabilities and Net Worth

Current:			
Proceeds Payable (Held a/c Brands)		$200.00	
Accounts Payable (Yard Co.)	$682.92		
Accounts Payable (Other)	560.65		
		1,243.57	
Notes Payable		6,000.00	
Total Current Liabilities			$7,443.57
Net Worth:			
Deficit			3,783.50
Total Liabilities and Net Worth			$3,660.07

[fol. 696] Firm No. 41

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$13,529.08	
Buying Commissions		5,352.58	
Gross Income			$18,881.66
Less Deductions			6.00
Total Operating Income			$18,875.66

Expenses:			
Non-Owners' Salaries:			
Yardmen	$1,855.00		
Extra Help	511.00		
Com. Paid as Salaries.	24.70		
		2,390.70	
Total Salaries			2,390.70
Bonuses Paid		68.00	
Travel & Entertainment		993.40	
Advertising		395.51	
Split Commission Paid		2,470.68	
Telephone & Telegraph		431.11	
Stationery & Office Expense (Including General Postage)		65.07	
Horse & Saddle		6.00	
Insurance		197.41	
Taxes		6.32	
Bond Premiums		50.00	
Exchange Assessments & Dues		294.13	
Legal & Auditing		10.00	
Meals		76.00	
Errors & Adjustments		87.84	
Miscellaneous Operating Expense		316.14	
			5,467.61
Total Operating Expense			7,858.31
Net Operating Profit			11,017.35
Other Income			3.00
			11,020.35
Other Deductions:			
Interest Paid			680.37
Net Gain			$10,339.98

[fol. 697] Firm No. 41

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$5,344.99
Additions:		
Net Gain	$10,339.98	
Additional Investment	550.00	
		10,889.98
Total		14,234.97
Deductions:		
Withdrawals	11,677.92	
Other	6,340.55	
		18,018.47
Deficit December 31, 1925		$3,783.50

[fol. 698] Firm No. 41

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Non-Owners:		
#1 Yardman—Cattle, 12 Mos.	$1,855.00	
Extra Help—Cattle	511.00	
Commissions Paid as Salaries	24.70	
Total Salaries		$2,390.70

[fol. 699] Firm No. 41

South Omaha, Nebraska

Statement or Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$7,106.35		
Hogs	870.95		
Sheep	34.00		
		$8,011.30	
Mixed Cars		951.81	
Drive-Ins and Truck-In Sales:			
Cattle & Calves	73.42		
Hogs	84.63		
		158.05	
Dealer and Speculator Sales:			
Cattle	4,413.87		
Calves	4.05		
		4,417.92	
Total Selling			$13,539.08
Less Error on Books			10.00
			$13,529.08

Buying

Straight Cars:			
Cattle & Calves	2,627.00		
Sheep	20.00		
		2,647.00	
Drive-Out and Truck-Out Purchases:			
Cattle		59.25	
Dealer and Speculator Purchases:			
Cattle		2,661.33	
Total Buying		5,367.58	
Less Error on Books		15.00	
			5,352.58
Total Commissions			$18,881.66

[fol. 700]

Firm No. 41

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars S. D.	No. Cars D. D.	No. Head
Straight Cars:			
Cattle & Calves	389	...	9,896
Hogs	60	1	4,366
Sheep	1	1	310
Total	450	2	14,572
Mixed Cars:			
Cattle	49	...	371
Calves			176
Hogs			2,293
Sheep			79
Total	49	...	2,919
Drive-In and Truck-In Sales:			
Cattle	...	...	78
Calves	...	...	29
Hogs	...	...	296
Total	...	...	403
Dealer and Speculator Sales:			
Cattle	...	...	10,271
Calves	...	...	11
Total	...	...	10,282
Total Selling	499	2	28,176

Buying

Straight Cars:			
Cattle & Calves	172	...	4,970
Sheep	...	1	303
Total	172	1	5,273
Drive-Out and Truck-Out Purchases:			
Cattle	...	...	93
Dealer and Speculator Purchases:			
Cattle	...	...	4,959
Total Buying	172	1	10,325
Total Volume	671	3	38,501

[fol. 701] **Ex. 48**

Auditor's Report Year Ended December 31, 1925

Firm No. 42

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Proceeds Receivable	$2,574.78		
Accounts Receivable	159.64		
Total Current Assets		$2,734.42	
Fixed:			
Office and Operating Equipment		111.24	
Total Assets			$2,845.66

Liabilities and Net Worth

Current:			
Bank Overdraft	5.45		
Accounts Payable (Yard Co.)	716.49		
Accounts Payable (Other)	42.98		
Total Current Liabilities		764.92	
Net Worth:			
Capital		2,080.74	
Total Liabilities and Net Worth			$2,845.66

[fol. 702] **Firm No. 42**

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank	$2,866.68		
Accounts Receivable	159.96		
Total Current Assets		$3,026.64	
Fixed:			
Office and Operating Equipment		111.24	
Total Assets			$3,137.88

Liabilities and Net Worth

Current:			
Accounts Payable (Yard Co.)	$1,038.23		
Accounts Payable (Other)	43.26		
Total Current Liabilities		$1,081.49	
Net Worth:			
Capital		2,056.39	
Total Liabilities and Net Worth			$3,137.88

[fol. 703] Firm No. 42

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Income:			
Selling Commissions	$21,141.29		
Buying Commission	731.85		
		$21,873.14	
Miscellaneous Income		4.69	
Total Operating Income			$21,877.83
Expense:			
Non-Owners' Salaries:			
Yardmen	2,100.00		
Office	1,800.00		
Extra Help	322.80		
Total Salaries		4,222.80	
Clearance & Split Com. Paid	30.80		
Advertising	987.53		
Rent	450.00		
Telephone & Telegraph	131.31		
Stationery & Office Expense	123.02		
General Postage	45.00		
Insurance	24.27		
Taxes	11.40		
Bond Premiums	38.00		
Exchange Assessments & Dues	237.97		
Meals	3.85		
Miscellaneous	18.30		
		2,101.45	
Total Operating Expense			6,324.25
Net Operating Profit			15,553.58
Other Income:			
Freight and Yardage			4.29
Total			15,557.87
Deductions from Income:			
Loss on Insurance, Inspection & Meat Board		10.56	
Loss on Feed		4.24	
			14.80
Net Gain			$15,543.07

[fol. 704] Firm No. 42

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924	$2,080.74
Additions:	
Net Gain	15,543.07
Total	17,623.81
Deductions:	
Withdrawals	15,567.42
Net Worth, as of December 31, 1925	$2,056.39

[fol. 705] Firm No. 42

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Non-Owners' Salaries:	
#1 Yardman*	$2,100.00
#2 Office	1,800.00
Extra Help	322.80
Total Salaries	$4,222.80

[fol. 706] Firm No. 42

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$9,694.36	
Hogs	3,943.15	
Sheep	54.00	
		$13,691.51
Mixed Cars		1,972.50
Yard Sales:		
Cattle and Calves	547.40	
Hogs	3,581.68	
		4,229.08

* Cattle & Hog Depts. Also sells hogs in Truck Division.

Drive-Ins and Truck-Ins:			
Cattle	429.77		
Calves	64.37		
Hogs	842.10		
Sheep	9.60		
		1,345.84	
		21,138.93	
Add Unlocated Difference		2.36	
Total Selling			$21,141.29

Buying

Straight Cars:		
Cattle	719.10	
Drive-Outs and Truck-Outs:		
Cattle	12.75	
Total Buying		$731.85

[fol. 707]

Firm No. 42

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D.D.	No. Head
Straight Cars:			
Cattle and Calves	..	503	13,647
Hogs	3	269	18,702
Sheep	2	1	648
	5	773	32,997
Mixed Cars:			
Cattle and Calves, Hogs, Sheep	..	103	1,138 / 4,489 / 2
	..	103	5,629
Yard Sales:			
Cattle and Calves	..	...	1,372
Hogs	..	...	35,305
	..	...	36,677
Drive-Ins and Truck-Ins:			
Cattle	..	...	537
Calves	..	...	161
Hogs	..	...	3,015
Sheep	..	...	48
			3,761
Total Selling	5	876	79,064

Buying

	No. Cars S. D.	No. Cars D.D.	No. Head
Straight Cars:			
Cattle	..	49	1,406
Drive-Outs and Truck-Outs:			
Cattle	..	...	17
Total Buying	..	49	1,423

[fol. 708]

Ex. 49

Auditor's Report, Year Ended December 31, 1925

Firm No. 43

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$184.71		
Proceeds Receivable	9,114.33		
Accounts Receivable	15,198.73		
Notes Receivable	14,633.86		
Miscellaneous	21,686.52		
Total Current Assets		$60,818.15	
Fixed:			
Membership	1,000.00		
Office & Operating Equipment	2,800.00		
Total Fixed Assets		3,800.00	
Deferred:			
Suspense Account		193.17	
Total Assets			$64,811.32

Liabilities and Net Worth

Current:			
Bank Overdraft	$24,363.58		
Accounts Payable—Other	9,968.67		
Total Current Liabilities		$34,332.25	
Net Worth:			
Capital	30,479.07		
Total Net Worth		30,479.07	
Total Liabilities and Net Worth			$64,811.32

[fol. 709]

Firm No. 43

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$163.74		
Accounts Receivable	12,503.36		
Notes Receivable	12,645.08		
Miscellaneous	17,036.73		
Total Current Assets		$42,348.91	
Fixed:			
Membership	1,000.00		
Office & Operating Equipment	2,400.00		
Total Fixed Assets		3,400.00	
Deferred:			
Suspense Account		318.37	
Total Assets			$46,067.28

Liabilities and Net Worth

Current:			
Bank Overdraft	$6,896.37		
Accounts Payable Other	11,307.98		
Total Current Liabilities		$18,204.35	
Net Worth:			
Capital	27,862.93		
Total Net Worth		27,862.93	
Total Liabilities and Net Worth			$46,067.28

[fol. 710]

Firm No. 43

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$86,441.88		
Buying Commission	2,488.00		
		$88,929.88	
Split Commission		631.48	
Miscellaneous Income		1,898.70	
Gross Income		91,460.06	
Less: Deductions		16.45	
Total Operating Income			$91,443.61

Expenses:

Owners' Salaries:

Manager	$10,800.00	
Salesmen	10,800.00	
Other	600.00	
		$22,200.00

Non-Owners' Salaries:

Salesmen	18,935.00	
Yardmen	6,107.00	
Office	6,837.50	
Extra Help	88.65	
		31,968.15
Total Salaries		$54,168.15
Bonuses Paid	140.00	
Travel & Entertainment	4,063.20	
Advertising	6,875.00	
Rent	840.00	
Telephone & Telegraph	827.58	
Stationery & Office Expense	718.37	
Charity & Donations	110.00	
Horse & Saddle	285.60	
Insurance	923.23	
Taxes	31.88	
Bond Premiums	92.00	
Exchange Assessments & Dues	998.45	
Legal & Auditing	447.50	
Meals	611.35	
Membership Rentals	700.00	
Depreciation	400.00	
Errors & Adjustments	17.63	
Miscellaneous	522.17	
		18,603.96
Total Operating Expenses		$72,772.11
Net Operating Profit		18,671.50

Other Deductions:

Interest Paid	141.42
Net Gain	$18,530.08

[fol. 711] Firm No. 43

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$30,479.07
Additions:		
Net Gain	$18,530.08	
Salaries credited to Partners	22,200.00	
Checks credited to Partners	3,681.84	
Profit on Sale of Membership	2,600.00	
Credit to Partner's Account for Traveling & Legal Expense incurred in interests of firm	700.00	

Debit Balance in retiring Partner's Account transferred to Accounts Receivable	110.81	
Credit applicable to 1924 operations transferred from Expense Account	309.59	
Total		48,132.32
		78,611.39
Deductions:		
Withdrawals	50,071.13	
Uncollectible Accounts	677.33	
Total		50,748.46
Net Worth, December 31, 1925		$27,862.93

[fol. 712]

Firm No. 43

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
# 1 Manager,	12 Mo.	$10,800.00	
# 2 Cattle Salesman,	12 Mo.	$10,800.00	
# 3 Solicitor,	3 Mo.	600.00	
Total Owners' Salaries			$22,200.00
Non-Owners' Salaries:			
# 4 Cattle Salesman,	12 Mo.	3,900.00	
# 5 Cattle "	12 Mo.	3,600.00	
# 6 Cattle Salesman,	12 Mo.	3,000.00	
# 7 Hog Salesman,	12 Mo.	3,900.00	
# 8 Hog Salesman,	11 Mo.	1,725.00	
# 9 Sheep Salesman,	12 Mo.	2,810.00	
Total Salesmen's		18,935.00	
#10 Yardman—General,	12 Mo.	1,800.00	
#11 " "	12 Mo.	1,800.00	
#12 " "	7 Mo.	1,025.00	
#13 " "	8 Mo. 21 D.	582.00	
#14 " "	9 Mo.	900.00	
Total Yardmen's		6,107.00	
#15 Clerk,	2 Mo.	200.00	
#16 Cashier,	12 Mo.	2,220.00	
#17 Clerk,	1 Mo.	125.00	
#18 Stenographer,	12 Mo.	1,590.00	
#19 Clerk,	10 Mo.	1,127.50	
#20 Clerk,	11 Mo.	1,575.00	
Total Office		6,837.50	
Extra Help		88.65	
Total Non-Owners' Salaries			31,968.15
Total Salaries			$54,168.15

[Vol. 713] Firm No. 43

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$38,438.27		
Hogs	33,481.79		
Sheep	3,283.80		
		$75,203.86	
Mixed Cars:		6,793.67	
Drive-Ins and Truck-Ins:			
Cattle	326.35		
Calves	91.35		
Hogs	1,417.16		
Sheep	468.76		
		2,303.62	
Yard Sales:			
Cattle & Calves	1,719.00		
Hogs	272.36		
Sheep	160.20		
		2,151.56	
		86,452.71	
Less Unlocated Difference		10.83	
Total Selling Commissions			$86,441.88

Buying

Straight Cars:			
Cattle & Calves	$1,173.75		
Hogs	10.00		
Sheep	1,242.00		
		2,425.75	
Drive-Outs and Truck-Outs:			
Cattle	6.75		
Hogs	9.40		
Sheep	46.00		
		62.15	
		2,487.90	
Add Unlocated Difference		.10	
Total Buying Commissions			$2,488.00

[fol. 714]

Firm No. 43

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D.D.	Head
Straight Cars:			
Cattle & Calves	2,060	...	53,395
Hogs	1,446	560	165,159
Sheep	28	140	37,959
	3,534	700	256,513
Mixed Cars:			
Cattle & Calves	346	...	3,662
Hogs			14,818
Sheep			1,340
	346	...	19,820
Drive-Ins and Truck-Ins:			
Cattle	...	...	428
Calves	...	...	232
Hogs	...	...	5,106
Sheep	...	...	4,666
	...	...	10,432
Yard Sales:			
Cattle & Calves	...	...	4,107
Hogs	...	...	2,692
Sheep	...	...	1,286
Total Selling	3,880	700	294,850

Buying

Straight Cars:			
Cattle & Calves	78	...	2,596
Hogs	...	1	158
Sheep	23	47	14,423
	101	48	17,177
Drive-Outs and Truck-Outs:			
Cattle	...	...	9
Hogs	...	...	47
Sheep	...	...	230
			286
Total Buying	101	48	17,463

[fol. 715] Ex. 50

Auditor's Report, Year Ended December 31, 1925

Firm No. 44

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$300.00		
Cash in Bank	3,190.76		
		$3,490.76	
Accounts Receivable		1,320.23	
Total Current Assets			$4,810.99
Fixed:			
Operating Equipment			782.82
Deferred:			
Suspense			294.83
Total Assets			$5,888.64

Liabilities and Net Worth

Current:			
Accounts Payable (Yard Co.)	$960.93		
Accounts Payable (Other)	24.61		
Total Current Liabilities			$985.54
Net Worth:			
Capital	5,000.00		
Deficit	96.90		
Net Worth		4,903.10	
Total Liabilities and Net Worth			$5,888.64

[fol. 716] Firm No. 44

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$300.00		
Cash in Bank	1,726.69		
		$2,026.69	
Accounts Receivable		1,304.04	
Total Current Assets			$3,330.73
Fixed:			
Operating Equipment			812.42

Deferred:		
Suspense	294.83	
Total Assets		$4,437.98

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)	$1,344.86	
Net Worth:		
Capital	$5,000.00	
Deficit	1,906.88	
Net Worth	3,093.12	
Total Liabilities and Net Worth		$4,437.98

[fol. 717]

Firm No. 44

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$26,174.15		
Buying Commission	2,538.80		
	28,712.95		
Less Errors	.28		
Gross Income		$28,712.67	
Miscellaneous Income		195.83	
Total Operating Income			$28,908.50
Expense:			
Owners' Salaries:			
Salesmen	6,000.00		
Total Owners' Salaries		6,000.00	
Non-Owners' Salaries:			
Salesmen	6,900.00		
Buyer	2,400.00		
Yardmen	2,445.25		
Office	4,200.00		
Commission paid as Salary	128.22		
Total Non-Owners' Salaries		16,073.47	
Total Salaries		22,073.47	
Travel and Entertainment	1,812.93		
Advertising	3,203.76		
Rent	840.00		
Telephone & Telegraph	260.35		

Stationery & Office Supplies	600.94	
General Postage	357.00	
Charity and Donations	92.00	
Horse and Saddle	224.20	
Insurance	309.19	
Taxes	33.10	
Bond Premiums	50.00	
Exchange Assessments & Dues	445.34	
Meals	228.49	
Errors and Adjustments	38.10	
Miscellaneous	134.17	
Total General Expense	8,629.57	
Total Operating Expense		30,703.04
Net Loss		$1,794.54

[fol. 718] Firm No. 44

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$4,903.10
Deduct:		
Net Loss	$1,794.54	
Federal Income Tax for 1924	15.44	
		1,809.98
Net Worth December 31, 1925		$3,093.12

[fol. 719] Firm No. 44

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:		
Salesmen:		
#1 Cattle, full time	$6,000.00	
Total Owners' Salaries		$6,000.00
Non-Owners' Salaries:		
Salesmen:		
#2 Cattle, full time	3,000.00	
#3 Hog " "	2,100.00	
#4 " " "	1,800.00	
Total Salesman Salaries		6,900.00
Buyers:		
#5 Cattle Feeder Buyer, full time	2,400.00	
Total Buyers' Salaries		2,400.00

Yardmen Salaries:

#6	Cattle Yardman,	full time	.....	1,500.00	
#7	General "	2½ Months	.....	320.25	
#8	" "	3 "	.....	325.00	
*#10	" "		.....	300.00	
	Total Yardmen Salaries		.....		2,445.25

Office:

#9	Full time	.....	3,000.00	
*#10	" "	.....	1,200.00	
	Total Office Salaries	.....		4,200.00

Commission Paid as Salary:

½ Commission for Selling Sheep	.....	128.22
Total Salaries	.....	$22,073.47

[fol. 720]

Firm No. 44

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:

Cattle & Calves	.....	$16,492.77	
Hogs	.....	3,799.03	
Sheep	.....	196.80	
			$20,488.60
Mixed Cars	.....		2,433.28

Truck-Ins and Drive-Ins:

Cattle	.....	656.00	
Calves	.....	71.20	
Hogs	.....	1,650.12	
Sheep	.....	37.30	
			2,414.62

Dealer and Speculators:

Cattle & Calves	.....	914.72	
Hogs	.....	100.68	
			1,015.40
(x) Total Selling	.....		$26,351.90

*Divided—80% Office, 20% Yard—General.

Buying

Straight Cars:		
Cattle & Calves		2,282.50
Drive-Outs and Truck-Outs:		
Cattle	69.75	
Calves	8.80	
		78.55
(x)(x) Total Buying		$2,361.05
(x) P. L. Total	$26,174.15	
Transferred from P. L.:		
Buying	177.75	
Corrected Selling Commissions		$26,351.90
(x)(x) P. L. Total	$2,538.80	
Transferred to P. L.:		
Selling	177.75	
Corrected Buying Commissions		$2,361.05

[fol. 721]

Firm No. 44

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars S. D.	No. Cars D. D.	No. Head
Straight Cars:			
Cattle & Calves	881	...	22,429
Hogs	254	2	18,121
Sheep	12	5	2,703
	1,147	7	43,253
Mixed Cars:			
Cattle & Calves, Hogs, Sheep	134	...	1,619 / 4,807 / 47
	134	...	6,473
Drive-Ins and Truck-Ins:			
Cattle	...	...	850
Calves	...	...	177
Hogs	...	...	5,948
Sheep	...	...	185
	...	...	7,160

Dealer and Speculator:	No. Cars S. D.	No. Cars D. D.	No. Head
Cattle & Calves	...	...	2,175
Hogs	...	...	1,000
	...	...	3,175
Total Selling	1,281	7	60,061
Buying			
Straight Cars:			
Cattle & Calves	146	...	4,826
Drive-Outs and Truck-Outs:			
Cattle	...	...	98
Calves	...	...	22
Total Buying	146	...	4,946

[fol. 722]

Ex. 51

Auditor's Report Year Ended December 31, 1925

Firm No. 45

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash in Bank	$1,000.00		
Total Current Assets		$1,000.00	
Fixed:			
Membership	2,250.00		
Office & Operating Equipment	477.43		
Total Fixed Assets		2,727.43	
Goodwill		4,272.57	
Total Assets			$8,000.00
Liabilities and Net Worth			
Current:			
Notes Payable	$7,000.00		
Total Current Liabilities		$7,000.00	
Net Worth:			
Capital		1,000.00	
Total Liabilities and Net Worth			$8,000.00

[fol. 723]

Firm No. 45

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

December 31, 1925 — Exhibit B.

Assets

Current:			
Cash in Bank	$420.15		
Accounts Receivable (Other)	194.24		
Total Current Assets		$614.39	
Fixed:			
Memberships	2,250.00		
Office & Operating Equipment	759.40		
Total Fixed Assets		3,009.40	
Goodwill		4,272.57	
Total Assets			$7,896.36

Liabilities and Net Worth

Current:			
Accounts Payable:			
Yard Co.	$340.71		
Other	295.73	$636.44	
Notes Payable		2,000.00	$2,636.44
Net Worth:			
Capital		8,000.00	
Deficit		2,740.08	
Total Net Worth			5,259.92
Total Liabilities and Net Worth			$7,896.36

[fol. 724]

Firm No. 45

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commissions	$13,733.44	
Buying Commissions	1,048.30	$14,781.74
Operating Income		14,781.74
Less: Errors & Adjustments		.20
Total Operating Income		14,781.54

Expense:			
Owners' Salaries:			
Salesmen		3,333.00	
Non-Owners' Salaries:			
Salesmen	$4,630.00		
Yardmen	2,706.00		
Office	2,062.25		
Extra Help	148.75		
Com. Paid as Salary	789.48		
		10,336.48	
Total Salaries		$13,669.48	
Travel & Entertainment	620.61		
Advertising	2,133.70		
Rent	330.00		
Telephone & Telegraph	314.76		
Stationery & Office Expense	384.41		
General Postage	53.00		
Charity	10.00		
Horse & Saddle	135.15		
Insurance	225.04		
Taxes	8.20		
Bond Premium	5.00		
Exchange Assessments & Dues	186.88		
Auditing	15.00		
Meals	17.15		
Miscellaneous	287.81		
		4,725.71	
Net Operating Expense			18,395.19
Net Operating Loss			3,613.65
Other Income:			
Miscellaneous			6.33
			3,607.32
Other Deductions:			
Interest Paid		229.50	
Uncollectible Accounts		76.29	
			305.79
Net Loss			$3,913.11

[fol. 725] Firm No. 45

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31 ,1924		$1,000.00
Additions:		
Undrawn Salary	$1,173.03	
Additional Investment	7,000.00	
		8,173.03
Total		9,173.03
Deductions:		
Net Loss		3,913.11
Net Worth as of December 31, 1925		$5,259.92

[fol. 726] Firm No. 45

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Owner Salaries:				
# 1 Hog Salesman	8 Mo.			$3,333.00
Non-Owner Salaries:				
# 2 Cattle Salesman	2 Mo.	$600.00		
# 3 Cattle Salesman	10 Mo.	3,000.00		
# 4 Hog Salesman	3 Mo.	577.00		
# 5 Hog Salesman	2 Mo.	453.00		
Total Salesmen			$4,630.00	
# 6 Cattle Yard	1 Mo.	64.60		
# 7 Cattle Yard	2 Mo.	235.40		
# 8 Cattle Yard	10 Mo.	1,646.00		
# 9 Cattle Yard	3 Mo.	550.00		
#10 Hog Yard	2 Mo.	210.00		
Total Yardmen			2,706.00	
#11 Office	2 Mo.	322.25		
#12 Office	2 Mo.	240.00		
#13 Office	8 Mo.	1,500.00		
Total Office			2,062.25	
#14 Extra Help, Cattle Yard		7.00		
#15 Extra Office		141.75		
Total Extra			148.75	

Commissions Paid as Salary:			
#16 Hog Sales	183.90		
#17 Hog Sales	359.15		
#18 Hog Sales	242.73		
#19 Sheep Sales	3.70		
Total Com. Paid as Salary		789.48	
Total Non-Owner Salaries			10,336.48
Total Salaries			$13,669.48

[fol. 727] Firm No. 45

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$7,948.84		
Hogs	2,062.51		
Sheep	76.45		
		$10,087.80	
Mixed Cars		713.25	
Drive-Ins and Truck-Ins:			
Cattle	513.65		
Calves	99.20		
Hogs	506.42		
Sheep	44.15		
		1,163.42	
Speculator—Yard Sales:			
Cattle & Calves	1,715.00		
Hogs	20.86		
		1,735.86	
Unlocated Difference		33.11	
Total Selling			$13,733.44

Buying

Straight Cars:			
Cattle & Calves	821.25		
Hogs	10.00		
Sheep	142.00		
		973.25	
Drive-Outs and Truck-Outs:			
Cattle		55.45	
Speculator—Yard Purchases:			
Cattle & Calves		19.60	
Total Buying			$1,048.30

[fol. 728] Firm No. 45

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	449	...	11,300
Hogs	142	...	10,673
Sheep	4	...	646
	595	...	22,619
Mixed Cars:			
Cattle & Calves Hogs Sheep	48	...	567 1,892 333
	48	...	2,792
Drive-Ins and Truck-Ins:			
Cattle	...	...	649
Calves	...	...	248
Hogs	...	...	1,810
Sheep	...	...	218
	...	...	2,925
Speculator—Yard Sales:			
Cattle & Calves	...	...	4,049
Hogs	...	...	135
	...	...	4,184
Total Selling	643	...	32,520

Buying

Straight Cars:			
Cattle & Calves	53	...	1,476
Hogs	1	...	79
Sheep	3	5	1,214
	57	5	2,769
Drive-Outs & Truck-Outs:			
Cattle	...	...	77
Speculator—Yard Purchases:			
Cattle & Calves	...	...	40
Total Buying	57	5	2,886

[fol. 729] Ex. 52

Auditor's Report Year Ended December 31, 1925

Firm No. 46

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash in Bank	$33,106.69		
Proceeds Receivable	1,271.44		
Accounts Receivable	9,406.74		
Other Stocks, Bonds & Investments.	1,000.00		
Total Current Assets		$44,784.87	
Fixed:			
Memberships	2,290.00		
Office & Operating Equipment	784.00		
Total Fixed Assets		3,074.00	
Total Assets			$47,858.87

Liabilities and Net Worth

Current:			
Accounts Payable (Yard Co.)		$10.41	
Net Worth:			
Capital		47,848.46	
Total Liabilities and Net Worth			$47,858.87

[fol. 730] Firm No. 46

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank	$22,735.76		
Proceeds Receivable	373.55		
Accounts Receivable	142.26		
Notes Receivable	16,000.00		
Total Current Assets		$39,251.57	
Fixed:			
Office & Operating Equipment		732.75	
Total Assets			$39,984.32

Liabilities and Net Worth

Current:			
Accrued Liabilities		$211.48	
Net Worth:			
Capital Stock	$40,000.00		
Less Deficit	227.16		
Total Net Worth		39,772.84	
Total Liabilities and Net Worth			$39,984.32

[fol. 731] Firm No. 46

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$50,893.43	
Buying Commission		5,555.70	
Total Operating Income			$56,449.13
Expenses:			
Owners' Salaries:			
Salesmen & Buyer....	$4,416.66		
Office	400.00		
Non-Active	8,949.99		
	$13,766.65		
Non-Owners' Salaries:			
Salesmen	14,845.00		
Order Buyers	4,683.33		
Yardmen	3,375.00		
Office	6,723.25		
Extra Help	63.00		
Com. paid as salary..	1,487.93		
	31,177.51		
Total Salaries		44,944.16	
Travel & Entertainment	954.20		
Advertising	5,577.96		
Rent	1,080.00		
Telephone & Telegraph	898.66		
Stationery & Office Expense	900.67		
General Postage	173.18		
Charity & Donations	475.40		
Horse & Saddle	460.75		
Taxes	181.62		
Bond Premiums	91.00		
Exchange Assessment & Dues	724.10		
Errors & Adjustments	242.19		
Miscellaneous	304.96		
		12,084.69	
Total Operating Expenses			57,028.85
Net Operating Loss			579.72

Other Income:	
Freights	5.07
Total	574.65
Deductions from Income	89.47
Net Loss	$664.12

[fol. 732] Firm No. 46

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$47,848.46
Additions:		
Other		61,155.95
Total		109,004.41
Deductions:		
Net Loss	$664.12	
Other	68,567.45	
		69,231.57
Net Worth, December 31, 1925		$39,772.84

[fol. 733] Firm No. 46

South Omaha, Nebraska

Statement of Salaries, Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:				
# 1 Cattle Salesman,	9 Mos.....	$3,600.00		
# 2 " "	1 "	500.00		
# 3 Order Buyer,	1 "	316.66		
Total Salesmen & Buyers			$4,416.66	
# 4 Office,	1 Mo.....		400.00	
# 5 Non-Active,	Full time..	4,974.99		
# 6 " "	9 Mos.....	3,600.00		
# 7 " "	1 "	375.00		
Total Non-Active			8,949.99	
Total Owners' Salaries				$13,766.65
Non-Owners' Salaries:				
# 8 Hog Salesman,	Full time..	4,200.00		
# 9 " "	" " ..	1,920.00		
#10 Cattle "	11 Mos.....	5,425.00		
#11 " "	Full time..	3,300.00		
Total Salesmen			14,845.00	

$12 Cattle Order Buyer,	11 Mos.....	2,883.33		
$13 " " "	Full time..	1,800.00		
Total Order Buyers.....			4,683.33	
$14 Cattle Yardman,	3 Mos.....	375.00		
$15 " "	Full time..	1,500.00		
$16 Hog "	" " ..	1,500.00		
Total Yardmen.....			3,375.00	
*$17 Office,	Full time...	1,680.00		
$18 "	4 Mos.....	468.75		
$19 "	11 "	3,737.50		
$20 "	8 "	837.00		
Total Office			6,723.25	
Extra Help			63.00	
Commission Paid as Salaries.....			1,487.93	
Total Non-Owners' Salaries.....				31,177.51
Total Salaries				$44,944.16

[fol. 734] Firm No. 46

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves.....	$23,696.44		
Hogs	8,673.95		
Sheep	1,563.90		
		$33,934.29	
Mixed Cars		7,831.36	
Drive-Ins:			
Cattle	2,152.76		
Calves	490.20		
Hogs	4,754.02		
Sheep	251.99		
		7,648.97	
Dealer and Speculator Sales:			
Cattle & Calves.....	1,418.55		
Hogs	6.86		
Sheep	53.40		
		1,478.81	
Total Selling Commissions.....			$50,893.43

Buying

Straight Cars:			
Cattle & Calves.....	4,368.10		
Sheep	948.00		
		5,316.10	

*Office 75%—Cattle Yardman 25%.

Drive-Outs:			
Cattle	180.20		
Calves	1.20		
Sheep	58.20		
		239.60	
Total Buying Commissions			5,555.70
Total Commissions			$56,449.13

[fol. 735] **Firm No. 46**

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

	Selling		
	No. Cars		
	D. D.	S. D.	No. Head
Straight Cars:			
Cattle and Calves	..	1,297	32,392
Hogs	4	592	41,587
Sheep	61	24	16,090
Total	65	1,913	90,069
Mixed Cars:			
Cattle and Calves	..	423	5,090
Hogs			15,626
Sheep			631
Total	..	423	21,347
Drive-Ins:			
Cattle	..	...	2,726
Calves	..	...	1,228
Hogs	..	...	17,170
Sheep	..	...	1,654
Total	..	...	22,778
Dealer and Speculator Sales:			
Cattle and Calves	..	...	3,506
Hogs	..	...	35
Sheep	..	...	835
Total	..	...	4,376
Total Selling	65	2,336	138,570
	Buying		
Straight Cars:			
Cattle and Calves	..	285	9,911
Sheep	46	2	13,875
Total	46	287	23,786

	No. Cars D. D.	No. Cars S. D.	No. Head
Drive-Out Purchases:			
Cattle	..	...	262
Calves	..	...	6
Sheep	..	...	291
Total	..	...	559
Total Buying	46	287	24,345
Total Volume	111	2,623	162,915

[fol. 736] Ex. 53

Auditor's Report, Year Ended December 31, 1925

Firm No. 47

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash on Hand	$550.00		
Cash in Bank, Gen. Acct.	2,728.79		
		$3,278.79	
Total Current Assets			$3,278.79
Fixed:			
Memberships		3,000.00	
Office & Operating Equipment		1,453.07	
Total Fixed Assets			4,453.07
Goodwill			15,000.00
Deferred:			
Organization Expense		63.60	
Horse Expense		159.22	
			222.82
Total Assets			$22,954.68
Liabilities and Net Worth			
Current:			
Bank Overdraft—Proceeds Acct.		$3.36	
Total Current Liabilities			3.36

Net Worth:

Capital Stock	10,000.00	
Surplus	12,951.32	
Total Net Worth		22,951.32
Total Liabilities and Net Worth		$22,954.68

[fol. 737] Firm No. 47

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:

Cash on Hand	$550.00	
Cash in Bank	850.81	
	$1,400.81	
Total Current Assets		$1,400.81

Fixed:

Membership	3,000.00	
Office & Operating Equipment	1,453.07	
Total Fixed Assets		4,453.07
Goodwill		15,000.00
Total Assets		$20,853.88

Liabilities and Net Worth

Net Worth:

Capital Stock	$10,000.00	
Surplus	10,853.88	
Total Net Worth		$20,853.88

[fol. 738] Firm No. 47

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:

Selling Commissions	$16,091.98	
Buying Commissions	381.80	
Total Operating Income		$16,473.78

Expenses:

Owners' Salaries:

Salesman	$2,750.00	
Total Owners' Salaries		2,750.00

Non-Owners' Salaries:			
Salesman	4,555.00		
Yardman	665.00		
Office	1,080.00		
Com. Paid As Salary	1,917.61		
Total Non-Owners' Salaries		8,217.61	
Total Salaries		10,967.61	
Travel & Entertainment	1,131.69		
Advertising	3,602.96		
Rent	390.00		
Telephone & Telegraph	260.21		
Office Supplies	79.79		
Charity & Donations	97.00		
Horse & Saddle	167.28		
Insurance	345.96		
Taxes	166.62		
Bond Premium	50.00		
Exchange Assessments & Dues	209.10		
Meals	125.38		
Miscellaneous	72.54		
		6,698.53	
Total Operating Expense			17,666.14
Net Operating Loss			1,192.36
Other Income:			
Miscellaneous			27.81
Total			1,164.55
Other Deductions:			
Interest Paid			526.47
Net Loss			$1,691.02

[fol. 739]

Firm No. 47

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$22,951.32
Deductions:			
Net Loss	$1,691.02		
Miscellaneous	231.42		
Withdrawal	175.00		
			2,097.44
Net Worth, December 31, 1925			$20,853.88

[fol. 740] Firm No. 47

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
#1 Hog Salesman	12 Mo.		$2,750.00
Non-Owners' Salaries:			
#2 Cattle Salesman	12 Mo.	$2,700.00	
#3 Cattle Salesman	12 Mo.	1,855.00	
Non-Owner Salesmen		4,555.00	
#4 Hog Yardman	12 Mo.	665.00	
#5 Office	12 Mo.	1,080.00	
#6 Commissions Paid as Salary:			
Sheep		$80.72	
Hogs		1,836.89	
		1,917.61	
Total Non-Owners' Salaries			8,217.61
Total Salaries			$10,967.61

[fol. 741] Firm No. 47

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling		
Straight Cars:			
Cattle & Calves	$6,388.56		
Hogs	6,106.93		
Sheep	32.85		
		$12,528.34	
Mixed Cars		1,952.61	
Drive-Ins and Truck-Ins:			
Cattle	202.09		
Calves	55.75		
Hogs	834.14		
Sheep	77.08		
		1,169.06	
Speculator—Yard Sales:			
Cattle & Calves	299.40		
Hogs	150.97		
		450.37	
Total		16,100.38	
Less Unlocated Difference		8.40	
Total Selling			$16,091.98

Buying

Straight Cars:		
Cattle & Calves	$345.00	
Drive-Outs and Truck-Outs:		
Cattle	36.80	
Total Buying		$381.80

[fol. 742] **Firm No. 47**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	Cars S. D.	Cars D. D.	Head
Straight Cars:			
Cattle & Calves	341	...	8,869
Hogs	423	...	29,085
Sheep	2	...	208
	766	...	38,162
Mixed Cars:			
Cattle & Calves	106	...	974
Hogs			4,936
Sheep			201
	106	...	6,111
Drive-Ins and Truck-Ins:			
Cattle	...	...	256
Calves	...	...	139
Hogs	...	...	2,975
Sheep	...	...	381
	...	...	3,751
Speculator—Yard Sales:			
Cattle & Calves	...	...	767
Hogs	...	...	1,267
	...	...	2,034
Total Selling	872	...	50,058

Buying

Straight Cars:			
Cattle & Calves	22	...	724
Drive-Outs and Truck-Outs:			
Cattle	...	...	56
Total Buying	22	...	780

[fol. 743] Ex. 54

Auditor's Report Year Ended December 31, 1925

Firm No. 48

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$600.00		
Cash in Bank	20,777.79		
		$21,377.79	
Checks in Transit		274.86	
Accts. Receivable, Sundry		3,136.26	
Notes Receivable		21,679.45	
Total Current Assets			$46,468.36
Fixed:			
Memberships Exchange		4,000.00	
Furniture & Fixtures		926.00	
Total Fixed Assets			4,926.00
Total Assets			$51,394.36

Liabilities and Net Worth

Current:			
Accounts Payable Estate (Bal.)			$282.16
Reserve:			
Reserve for taxes			1,074.35
Net Worth:			
Capital Stock		30,000.00	
Surplus		2,500.00	
Undivided Profits		17,537.85	
Total Net Worth			$50,037.85
Total Liabilities and Net Worth			$51,394.36

[fol. 744] Firm No. 48

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$600.00		
Cash in Gen'l Bank Acct.	10,526.33		
Cash in Proceeds Acct.	7,522.85		
		$18,649.18	
Accounts Receivable—Other		3,838.53	
Notes Receivable		19,839.00	
Total Current Assets			$42,326.71

Fixed:			
Memberships		4,000.00	
Furniture & Fixtures....	1,024.00		
Less Depreciation 1925..	153.60		
		870.40	
Total Fixed Assets			4,870.40
Total Assets			$47,197.11

Liabilities and Net Worth

Current:			
Accounts Payable, Yard Co.		$4,667.31	
Proceeds Held a/c Brands		2,855.54	
Total Current Liabilities			$7,522.85
Reserve:			
Reserve for Taxes			1,236.95
Net Worth:			
Capital Stock		30,000.00	
Undivided Profits		4,437.31	
Surplus		4,000.00	
Total Net Worth			38,437.31
Total Liabilities and Net Worth			$47,197.11

[fol. 745] Firm No. 48

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Commissions—Selling		$87,577.66	
Buying		3,725.85	
Total Operating Income			$91,303.51
Expenses:			
Salaries:			
Owners:			
Salesmen & Buyer...	$30,900.00		
Office	12,300.00		
		$43,200.00	
Non-Owner:			
Salesmen	$5,400.00		
Order Buyer	1,950.00		
Yardmen	6,580.00		
Office	6,000.00		
Extra Yard Help	656.00		
		20,586.00	
Total Salaries		$63,786.00	

Bonuses Paid	190.00		
Travel	1,446.35		
Advertising	11,930.10		
Rental	1,020.00		
Telephone & Telegraph	854.24		
Stationery & Office	1,984.61		
General Postage	1,109.75		
Charity & Donations	693.90		
Horse & Saddle	402.17		
Insurance	776.59		
Taxes	174.05		
Bond Premium	96.00		
Exchange Assessments	1,068.90		
Legal	300.00		
Meals, Employees	211.75		
Depreciation	153.60		
Errors & Adjustments	84.63		
Miscl. Expense	904.13		
Total Other Expense		$23,400.77	
Total Operating Expense			$87,186.77
Net Operating Profit			4,116.74
Other Income:			
Interest from Loans			571.55
Total			4,688.29
Other Deductions:			
Contribution to janitors	60.00		
Life Insurance Premium	48.08		
		108.08	
Net Gain			$4,580.21

[fol. 746] Firm No. 48

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth as of December 31, 1925		$50,037.85
Additions:		
Net Gain		4,580.21
Total		54,618.06
Deductions:		
Shippers Security Co.	$6,000.00	
Dividends declared 25%	7,500.00	
Reserve for Taxes	2,537.85	
Compensation Insurance August 1924	142.90	
Total Deductions		16,180.75
Net Worth as of December 31, 1925		$38,437.31

[fol. 747] Firm No. 48

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners:				
# 1 Steer Salesman,	12 Mos.	$7,200.00		
# 2 Cow "	12 "	7,200.00		
# 3 Hog "	12 "	6,600.00		
# 4 Sheep "	12 "	6,600.00		
# 5 Feeder Buyer,	12 "	3,300.00		
Total Salesmen & Buyers			$30,900.00	
# 6 Manager,	12 Mos.	7,200.00		
# 7 Cashier,	12 "	5,100.00		
Total Office			12,300.00	
Total Owner Salaries				$43,200.00
Non-Owners:				
# 8 Calf Salesman,	12 Mos.	3,000.00		
# 9 Hog Salesman,	12 "	2,400.00		
Total Salesmen			5,400.00	
#10 Feeder Buyer,	12 Mos.		1,950.00	
#11 Cattle Yardman,	12 "	1,800.00		
#12 " "	12 "	1,620.00		
#13 Sheep "	12 "	1,620.00		
#14 Hog "	12 "	1,540.00		
Total Yardmen			6,580.00	
#15 Bookkeeper,	12 Mos.	2,400.00		
#16 Asst. Bookkeeper,	12 "	1,800.00		
#17 Steno.	12 "	1,800.00		
Total Office			6,000.00	
Extra Cattle Yardman, 12 Mos.			656.00	
Total Non-Owner Salaries				20,586.00
Total Salaries				$63,786.00

[fol. 748] Firm No. 48

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$35,884.44	
Hogs	11,175.00	
Sheep	20,020.20	
		$67,079.64
Mixed Cars:		3,954.20

Drive-ins and Truck-Ins:

Cattle	2,252.64		
Calves	503.73		
Hogs	7,787.13		
Sheep	345.10		
		10,888.60	
Speculator—Yard Sales:			
Cattle & Calves	4,736.80		
Hogs	52.92		
Sheep	865.50		
		5,655.22	
Total Selling Commissions			$87,577.66

Buying

Straight Cars:

Cattle & Calves	$3,424.10		
Sheep	48.00		
		3,472.10	
Drive-Outs and Truck-Outs:			
Cattle	56.25		
Calves	36.60		
Hogs	3.40		
		96.25	
Speculator—Yard Purchases:			
Cattle		157.50	
Total Buying Commissions			$3,725.85

[fol. 749]

Firm No. 48

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
Straight Cars:	S. D.	D.D.	No. Head
Cattle & Calves	1,891	...	49,335
Hogs	770	1	53,903
Sheep	19	983	254,062
	2,680	894	357,300
Mixed Cars:			
Cattle & Calves, Hogs, Sheep	213	...	2,536 7,906 383
	213	...	10,825

	No. Cars		
	S. D.	D.D.	No. Head
Drive-Ins and Truck-Ins:			
Cattle	...	...	2,816
Calves	...	...	1,257
Hogs	...	...	27,856
Sheep	...	...	1,738
	...	...	33,667
Speculator Yard Sales:			
Cattle & Calves	...	...	11,593
Straight Cars:			
Hogs	...	...	590
Sheep	...	...	11,180
			23,363
Total Selling	2,893	984	425,155
Buying			
Straight Cars:			
Cattle & Calves	221	...	7,522
Sheep	2	1	690
	223	1	8,212
Drive-Outs and Truck-Outs:			
Cattle	...	...	78
Calves	...	...	104
Hogs	...	...	17
	...	...	199
Speculator—Yard Purchases:			
Cattle & Calves	...	...	248
Total Buying	223	1	8,659

[fol. 750]

Ex. 55

Auditor's Report, Year Ended December 31, 1925

Firm No. 49

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash in Bank—Proceeds Acct.	$11,562.70	
Proceeds Receivable	265.45	
Total Current Assets		$11,828.15

Fixed:			
Memberships	4,000.00		
Furniture & Fixtures	500.00		
Total Fixed Assets		4,500.00	
Goodwill		500.00	
Total Assets			$16,828.15
	Liabilities and Net Worth		
Current:			
Accounts Payable (other)		398.73	
Net Worth:			
Capital		16,429.42	
Total Liabilities & Net Worth			$16,828.15

[fol. 751]

Firm No. 49

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

	Assets		
Current:			
Cash in Bank—Proceeds Acct.	$11,825.64		
Proceeds Receivable	26.95		
Total Current Assets		$11,852.59	
Fixed:			
Memberships	2,000.00		
Furniture & Fixtures	450.00		
Total Fixed Assets		2,450.00	
Goodwill		500.00	
Total Assets			$14,802.59
	Liabilities and Net Worth		
Current:			
Accounts Payable—Yard Co.		15.55	
Accounts Payable—Other		306.33	
Net Worth:			
Capital	17,074.51		
Loss for year 1925		14,480.71	
Total Liabilities and Net Worth			$14,802.59

[fol. 752] Firm No. 49

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions		$4,961.25	
Buying Commissions		1,096.20	
Outside Commissions		2,018.95	
Gross Income			$8,076.40
Expenses:			
Owners' Salaries:			
Sheep Salesman	$3,600.00		
Sheep Salesman	2,700.00		
Total Owners' Salaries		6,300.00	
Non-Owners' Salaries:			
Office	810.00		
Yardman, sheep	1,200.00		
Extra Help	43.00		
Total Non-Owners' Salaries		2,053.00	
Total Salaries		8,353.00	
Bonuses Paid	415.00		
Split Commissions Paid	14.00		
Advertising	319.43		
Traveling Expenses	167.22		
Stationery & Office Expense	197.41		
Rent	390.00		
Bond Premiums	35.00		
Exchange Assessments & Dues	113.60		
Charity & Donations	15.00		
General Postage	65.00		
Telephone & Telegraph	184.56		
Meals	241.75		
Liability Insurance	113.20		
Taxes	14.48		
Miscellaneous Expense	31.55		
		2,317.20	
Total Operating Expense			10,670.20
Net Loss			2,593.80

[fol. 753] Firm No. 49

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$16,429.42
Additions:		
Additional Investments	$4,500.00	
Undrawn Salaries	6,300.00	
Total additions to Net Worth		10,800.00
		27,229.42
Deducations:		
Withdrawals	7,950.00	
Net Loss	2,593.80	
Withdrawal of partner	204.91	
Membership withdrawn	2,000.00	
		12,748.71
Net Worth, December 31, 1925		$14,480.71

[fol. 754] Firm No. 49

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

	Mos.		
Owners' Salaries:			
#1 Partner, sheep salesman	12		$3,600.00
#2 Partner, sheep salesman	9		2,700.00
Total Owners' Salaries			$6,300.00
Non-Owners' Salaries:			
#3 Office	9		810.00
#4 Yardman, sheep	12		1,200.00
Extra Help, Yard			43.00
			2,053.00
Total Salaries			$8,353.00

[fol. 755] Firm No. 49

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Hogs		$28.00	
Sheep		4,650.65	$4,678.65
Drive-Ins and Truck-Ins:			
Sheep			219.00
Dealers and Speculators:			
Sheep			63.60
Total Selling Commissions			$4,961.25

Buying

Straight Cars:			
Sheep			982.00
Drive-Outs and Truck-Outs:			
Sheep			114.20
Total Buying Commissions			$1,096.20

[fol. 756] Firm No. 49

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Hogs	2	....	177
Sheep	62	197	55,141
	64	197	55,318
Drive-Ins and Truck-Ins:			
Sheep	.....	....	2,075
Dealers and Speculators:			
Sheep	.....	....	1,158
Total Selling	64	197	58,551

	Selling		
Straight Cars:			
Sheep	3	47	15,343
Drive-Outs and Truck-Outs:			
Sheep	.....	....	1,401
	3	47	16,744

[fol. 757]

Ex. 56

Auditor's Report Year Ended December 31, 1925

Firm No. 50

South Omaha, Nebraska

Balance Sheet as at June 3, 1925

Exhibit A

	Assets	
Current:		
Cash in Bank	$2,400.00	
Total Assets		$2,400.00
	Net Worth	
Net Worth:		
Capital	$2,400.00	
Total Net Worth		$2,400.00

[fol. 758]

Firm No. 50

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B

	Assets		
Current:			
Proceeds Bank Account	$588.70		
General Bank Account	112.15		
		$700.85	
Proceeds Receivable		2.00	
Accounts Receivable		1.17	
Total Current Assets			$704.02
Fixed:			
Office & Operating Equipment		357.50	
Total Fixed Assets			357.50
Total Assets			$1,061.52

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co	$637.74	
" " —Others	45.29	
	$683.03	
Estray Accounts	29.75	
Total Current Liabilities		712.78
Net Worth:		
Capital of partners		348.74
Total Liabilities and Net Worth		$1,061.52

[fol. 759] **Firm No. 50**

South Omaha, Nebraska

Reconciliation of Net Worth for Period June 3, 1925 to December 31, 1925

Income:			
Selling Commissions	$5,814.96		
Buying Commissions	242.00		
		$6,056.96	
Split Commissions		4.62	
		6,061.58	
Less Deductions		5.20	
			$6,056.38
Expenses:			
Owners' Salaries:			
Salesmen	1,825.00		
Non-Owners' Salaries:			
Salesmen	1,000.00		
Yardmen	1,492.50		
Solicitor	375.00		
Office	105.00		
Extra Help	37.50		
Total Salaries		4,835.00	
Split Commissions Paid		36.00	
Travel and Entertainment		923.04	
Advertising		680.86	
Rent		297.50	
Telephone and Telegraph		262.29	
Stationery & Office Expense		396.24	
Insurance		56.50	
Exchange Assessment and Dues		50.36	
Bond		35.00	
Horse and Saddle		24.00	
Errors and Adjustments		.08	
Miscellaneous		81.40	
Net Operating Expenses			7,678.22
Net Operating Loss			1,621.84

Other Deductions:

Interest	2.20	
Cattle Loss	2.24	
		4.44
Net Loss		$1,626.28

[fol. 760] Firm No. 50

South Omaha, Nebraska

Reconciliation of Net Worth for Period June 3, 1925 to December 31, 1925

Exhibit D

Investment		$2,400.00
Deduct:		
Loss 1925	$1,200.15	
" 1925	426.13	
" Collection Account	9.90	
" Estray Account	11.81	
" Accounts Receivable	56.38	
Drawings	346.80	
		2,051.26
Net Worth December 31, 1925		348.74

[fol. 761] Firm No. 50

South Omaha, Nebraska

Statement of Salaries for Period June 3, 1925, to December 31, 1925

Schedule 1.

Owners' Salaries:	Mos.			
#1. Cattle Salesman	6		$1,425.00	
#2. Hog Salesman	2		400.00	
Total Owners' Salaries				$1,825.00
Non-Owners' Salaries:				
#3. Hog Salesman	5	$1,000.00		
Total Salesmen			1,000.00	
#4. Cattle Yardman	8½	937.50		
#5. Hog "	6	555.00		
Total Yardmen			1,492.50	
#6. Solicitor	2	375.00		
Total Solicitors			375.00	
#7. Office—Bookkeeper	1		105.00	
Extra Help			37.50	
Total Non-Owners' Salaries				3,010.00
Total Salaries				$4,835.00

[fol. 762] Firm No. 50

South Omaha, Nebraska

Statement of Commissions for Period June 3, 1925, to December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle & Calves	$1,216.90	
Hogs	3,098.56	
Sheep	38.20	
		$4,353.66
Mixed Cars		1,053.25
Drive-ins and Truck-ins:		
Cattle	23.60	
Calves	7.70	
Hogs	50.90	
		82.20
Dealers and Speculators:		
Cattle & Calves	54.30	
Hogs	272.10	
		326.40
		5,815.51
Less Unlocated Difference		.55
Total Selling		$5,814.96

Buying

Straight Cars:		
Cattle & Calves	$176.25	
Hogs	63.00	
		239.25
Drive-outs and Truck-outs:		
Hogs		2.75
Total Buying		$242.00

[fol. 763] Firm No. 50

South Omaha, Nebraska

Statement of Volume for Period June 3, 1925, to December 31, 1925

Schedule 3.

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	63	....	1,855
Hogs	197	13	14,624
Sheep	3	....	325
	263	13	16,804

	Cars S. D.	Cars D. D.	Head
Mixed Cars:			
Cattle & Calves, Hogs, Sheep	59	....	533 Cattle & Calves; 2,586 Hogs; 56 Sheep
	59	....	3,175
Drive-ins and Truck-ins:			
Cattle	.....	....	31
Calves	.....	....	21
Hogs	.....	....	182
	.....	....	234
Dealers and Speculators:			
Cattle and Calves	.....	....	107
Hogs	.....	....	2,555
	.....	....	2,662
Total Selling	322	13	22,875
Buying			
Straight Cars:			
Cattle & Calves	12	....	393
Hogs	2	2	294
	14	2	687
Drive-Outs and Truck-Outs:			
Hogs	.....	....	11
Total Buying	14	2	698

[fol. 764]

Ex. 57.

Auditor's Report Year Ended December 31, 1925

Firm No. 51

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:		
Cash on Hand	$1,100.00	
Cash in Bank	8,200.41	
	$9,300.41	
Proceeds Receivable	171.93	
Accounts Receivable	752.89	
Total Current Assets		$10,225.23

Fixed:		
Membership	1,800.00	
Office & Operating Equipment	950.00	
Total Fixed Assets		2,750.00
Total Assets		$12,975.23

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co.	$30.71	
" " —Other	5,311.19	
Total Current Liabilities		$5,341.90
Net Worth:		
Capital Invested	6,197.45	
Undivided Profits	1,435.88	
Total Net Worth		7,633.33
		$12,975.23

[fol. 765]

Firm No. 51

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash on Hand	$1,692.80	
Cash in Bank	2,162.35	
	$3,855.15	
Accounts Receivable	907.73	
Total Current Assets		$4,762.88
Fixed:		
Membership	2,800.00	
Office & Operating Equipment	770.00	
Total Fixed Assets		3,570.00
Total Assets		$8,332.88

Liabilities and Net Worth

Current:			
Bank Overdraft		$31.36	
Proceeds Payable—Held a/c Brands		119.00	
Proceeds Payable—Other		2,066.84	
Accounts Payable—Yard Co.	$14.75		
Accounts Payable—Other	73.80		
		88.55	
Total Current Liabilities			$2,305.75

Net Worth:			
Capital Invested	5,433.48		
Undivided Profits	593.65		
Total Net Worth		6,027.13	
Total Liabilities and Net Worth			$8,332.88

[fol. 766] Firm No. 51

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission		$26,043.87	
Buying Commission		774.45	
Total Operating Income			$26,818.32
Expenses:			
Owners' Salaries:			
Salesmen	$2,025.00		
Non-Active	3,600.00		
	$5,625.00		
Non-Owners' Salaries:			
Salesmen	6,480.00		
Yardmen	1,210.00		
Office	1,330.00		
Extra Help	211.25		
Commission paid as salary	45.40		
	9,276.65		
Total Salaries		14,901.65	
Travel & Entertainment	79.08		
Advertising	1,067.10		
Rent	840.00		
Telephone & Telegraph	346.17		
Stationery & Office Expense	246.14		
General Postage	622.06		
Charity and Donations	27.50		
Insurance	111.06		
Taxes	20.66		
Bonds	35.00		
Exchange Assessments & Dues	267.83		
Meals	99.60		
Depreciation	90.00		
Miscellaneous	242.04		
		4,094.24	
Total Operating Expenses			18,995.89
Net Operating Profit			7,822.43
Other Income:			
Insurance Received			105.00
			7,927.43
Other Deductions:			
Interest Paid			91.33
Net Gain			$7,836.10

[fol. 767] Firm No. 51

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924		$7,633.33
Additions:		
Net Gain	7,836.10	
		15,469.43
Deductions:		
Other	9,442.30	
Net Worth December 31, 1925		$6,027.13

[fol. 768] Firm No. 51

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:				
Salesman:				
#1 Hog	Full time		$2,025.00	
Non-Active:				
#2.	Deceased		3,600.00	
Total Owners				$5,625.00
Non-Owners' Salaries:				
Salesman:				
#3. Cattle	Full time	$3,050.00		
#4. "	10. Mos.	1,670.00		
#5. Hog	Full time	1,760.00		
			6,480.00	
Yardmen:				
#6. Hog	" "		1,210.00	
Office:				
#7. Bookeeper	" "		1,330.00	
Extra Help			211.25	
Commission paid as Salary			45.40	
				9,276.65
Total Salaries				$14,901.65

[fol. 769] Firm No. 51

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

Selling

Straight Cars:			
Cattle and Calves	$ 4,427.96		
Hogs	11,206.43		
Sheep	14.00		
		$15,648.39	
Mixed Cars:		1,489.18	
Drive-Ins and Truck-Ins:			
Cattle	872.35		
Calves	259.10		
Hogs	4,325.07		
Sheep	36.20		
		5,492.72	
Yard Sales:			
Cattle	1,045.00		
Calves	8.20		
Hogs	2,361.14		
		3,414.34	
		26,044.63	
Less Unlocated Difference		.76	
Total Selling Commissions			$26,043.87

Buying

Straight Cars:			
Cattle and Calves	690.75		
Hogs	30.00		
		720.75	
Drive-Outs:			
Cattle	4.50		
Calves	8.80		
Hogs	40.04		
		53.70	
Total Buying Commissions			774.45

[fol. 770] Firm No. 51

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3

Selling

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	229	....	6,110
Hogs	737	21	56,023
Sheep	1	....	48
	967	21	62,181
Mixed Cars:			
Cattle & Calves / Hogs / Sheep	82	....	634 / 4,196 / 103
	82	....	4,933
Drive-Ins and Truck-Ins:			
Cattle	.....	....	1,137
Calves	.....	....	652
Hogs	.....	....	15,504
Sheep	.....	....	174
			17,467
Yard Sales:			
Cattle	.....	....	2,622
Calves	.....	....	24
Hogs	.....	....	24,625
			27,271
Total Selling	1,049	21	111,852

Buying

Straight Cars:			
Cattle and Calves	43	....	1,439
Hogs	2	....	246
	45	....	1,703
Drive-Outs:			
Cattle	.....	....	5
Calves	.....	....	22
Hogs	.....	....	226
			253
Total Buying	45	....	1,956

[fol. 771] Ex. 58.

Auditor's Report Year Ended December 31, 1925

Firm No. 52

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A

Assets

Current:		
Proceeds Receivable	$6,076.39	
Accounts Receivable	130.05	
Total Current Assets		$ 6,206.44
Fixed:		
Memberships	10,000.00	
Total Fixed Assets		10,000.00
Deferred:		
Doubtful Accounts	55.00	
Total Assets		$16,261.44

Liabilities and Net Worth

Current:		
Bank Overdraft	$2,259.68	
Proceeds Payable	1,438.31	
Total Current Liabilities		$ 3,697.99
Net Worth:	12,563.45	
Total Liabilities and Net Worth		$16,261.44

[fol. 772] Firm No. 52

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash in Bank	$ 4,596.49	
Proceeds Receivable	48.29	
Accounts Receivable	433.76	
Total Current Assets		$ 5,078.54

Fixed:		
Memberships	10,000.00	
Total Fixed Assets	10,000.00	
Total Assets		$15,078.54

Liabilities and Net Worth

Current:		
Proceeds Payable	$ 1,001.75	
Accts. Payable (Yard Co.)	1,921.12	
Accts. Payable (Other)	42.50	
Total Current Liabilities	$ 2,965.37	
Net Worth	12,113.17	
Total Liabilities and Net Worth		$15,078.54

[fol. 773]

Firm No. 52

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C

Income:			
Selling Commissions		$31,305.89	
Buying Commissions		437.48	
		31,743.37	
Less: Deductions		35.47	
Total Operating Income			$31,707.90
Expenses:			
Owners' Salaries:			
Salesman		4,800.00	
Non-Owners' Salaries:			
Salesmen	9,900.00		
Yardman	258.33		
Office	1,919.00		
Extra Labor	251.25		
		12,329.58	
Total Salaries		17,128.58	
Bonuses Paid	1,355.35		
Split Commissions Paid	119.50		
Travel & Entertainment	2,340.48		
Advertising	2,467.83		
Rent	510.00		
Telephone & Telegraph	319.42		

Stationery & Office Expense	182.46		
General Postage	290.70		
Charity & Donations	235.00		
Insurance	366.33		
Taxes	8.37		
Bond Premium	27.00		
Exchange Assessments & Dues	41.85		
Legal & Auditing	184.20		
Meals	215.05		
Errors & Adjustments	184.53		
Unexplained Item	25.00		
Miscellaneous	267.39		
		9,520.46	
Total Operating Expense			26,649.04
Net Operating Profit			5,058.86
Other Deductions:			
Miscellaneous			279.60
Net Gain			$ 4,779.26

[fol. 774] Firm No. 52

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$12,563.45
Additions:			
Net Gain			4,779.26
			17,342.71
Deductions;			
Withdrawals	$4,970.25		
Other	259.29		
		5,229.54	
Net Worth, December 31, 1925			$12,113.17

[fol. 775] Firm No. 52

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
#1. Salesman, Hog—12 Mo.			$4,800.00
Non-Owner Salaries:			
#2. Salesman, Cattle—12 Mo.		$2,700.00	
#3. Salesman, Cattle—12 Mo.		3,600.00	
#4. Salesman, Hog—12 Mo.		3,600.00	
Non-Owner Salesmen		9,900.00	
#5. Yardman—3 Mo.		258.33	
#6. Bookkeeper—12 Mo.		1,685.00	
#7. Stenographer—2 Mo.		234.00	
Non-Owner Office		1,919.00	
Extra Cattle Yard		68.00	
Extra Hog Yard		12.00	
Extra Office		171.25	
Non-Owner Extra		251.25	
Total Non-Owner Salaries			12,328.58
Total Salaries			$17,128.58

[fol. 776] Firm No. 52

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$11,246.66	
Hogs	11,791.91	
Sheep	85.80	
		$23,124.37
Mixed Cars		3,590.06
Drive-ins and Truck-ins:		
Cattle	790.80	
Calves	194.40	
Hogs	1,459.59	
Sheep	606.50	
		3,051.29

Dealer and Speculators:			
Cattle	486.00		
Hogs	1,055.62		
		1,541.62	
Total		31,307.34	
Less Unlocated Difference		1.45	
Total Selling Commissions			$31,305.89

Buying

Straight Cars:			
Cattle	397.50		
Sheep	20.00		
		417.50	
Drive-outs & Truck-outs:			
Cattle		20.00	
		437.50	
Less Unlocated Difference		.02	
Total Buying Commissions			$437.48

[fol. 777]

Firm No. 52

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars D. D.	No. Cars S. D.	No. Head
Straight Cars:			
Cattle & Calves	.....	567	15,530
Hogs	44	721	57,557
Sheep	2	3	925
	46	1,291	74,012
Mixed Cars:			
Cattle & Calves, Hogs, Sheep	.....	182	2,003 8,481 279
	.....	182	10,763
Drive-In & Truck-Ins:			
Cattle & Calves	.....	....	1,000
Calves	.....	....	486
Hogs	.....	....	5,263
Sheep	.....	....	3,039
	.....	....	9,788

	No. Cars D. D.	No. Cars S. D.	No. Head
Dealers and Speculators:			
Cattle & Calves	.....	....	1,054
Hogs	.....	....	11,326
	.....	....	12,380
Total Selling	46	1,473	106,943
Buying			
Straight Cars:			
Cattle & Calves	.....	25	804
Sheep	1	....	200
	1	25	1,004
Drive-outs and Truck-outs:			
Cattle	.....	....	20
Total Buying	1	25	1,024

[fol. 778] Ex. 59

Auditor's Report Year Ended December 31, 1925

Firm No. 53

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand		$200.00	
Cash in Bank		5,399.62	
		$5,599.62	
Proceeds Receivable	155.62		
Accounts Receivable	14.44		
		170.06	
Total Current Assets			$5,769.68
Fixed:			
Office & Operating Equipment (Not depreciated)			1,149.45
Total Assets			$6,919.13

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)	$2,166.96	
Accounts Payable (Other)	1,110.33	
Total Current Liabilities		$3,277.29
Net Worth:		
Capital Stock—Authorized	25,000.00	
" " —Unused	21,000.00	
" " —Outstanding	4,000.00	
Deficit	358.16	
Total Net Worth		3,641.84
Total Liabilities and Net Worth		$6,919.13

[fol. 779]

Firm No. 53

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash on Hand	$200.00	
Cash in Bank	4,628.40	
Total Current Assets	4,828.40	$4,828.40
Fixed:		
Office & Operating Equipment (Not depreciated)		1,179.45
Total Assets		$6,007.85

Liabilities and Net Worth

Current:		
Accounts Payable (Yard Co.)	$2,913.65	
" " (Other)	99.00	
Total Current Liabilities		$3,012.65
Net Worth:		
Capital Stock—Authorized	$25,000.00	
" " —Unused	21,000.00	
" " —Outstanding	4,000.00	
Deficit	1,004.80	
Total Net Worth		2,995.20
Total Liabilities and Net Worth		$6,007.85

[fol. 780] Firm No. 53

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:				
Selling Commissions			$31,939.40	
Buying "			86.20	
Total Operating Income			32,025.60	
Expense:				
Salaries:				
Owners:				
Salesmen		$16,875.00		
Non-Owners:				
Salesmen	$1,840.00			
Yardmen	1,500.00			
Office	3,115.00			
Commission paid as salary	71.25			
		6,526.25		
Total Salaries		23,401.25		
Bonuses Paid	160.38			
Travel & Entertainment	627.52			
Advertising	6,062.75			
Rent	780.00			
Telephone & Telegraph	178.55			
Stationery & Office Expense	293.40			
General Postage	528.00			
Charity & Donations	36.50			
Horse & Saddle	15.00			
Insurance	70.70			
Taxes	39.81			
Bond Premium	30.00			
Exchange Assessment, Dues	414.53			
Meals	33.57			
Errors & Adjustments	28.08			
Miscellaneous	117.52			
		9,416.31		
Total Operating Expense			32,817.56	
Net Operating Loss			791.96	
Other Deductions:				
Bad Debts			5.00	
Net Loss				$796.96

[fol. 781] Firm No. 53

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924	$3,641.84
Additions:	
Gain in Feed and Yard Charges over several years prior	150.32
Total	3,792.16
Deductions:	
Net Loss	796.96
Net Worth December 31, 1925	$2,995.20

[fol. 782] Firm No. 53

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners:				
#1.	Hog Salesman	12	$6,000.00	
#2.	Cattle Salesman	12	6,000.00	
#3.	" "	12	4,875.00	
	Total Owner Salaries			$16,875.00
Non-Owners:				
#4.	Cattle Salesman	12	1,840.00	
#5.	Cattle Yardman	12	1,500.00	
#6.	Stenographer	12	1,200.00	
#7.	Bookkeeper	12	1,915.00	
	Commission paid as Salary		71.25	
	Total Non-Owner Salaries			6,526.25
	Total Salaries			$23,401.25

[fol. 783] Firm No. 53

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2

	Selling	
Straight Cars:		
Cattle & Calves	$18,339.77	
Hogs	7,356.98	
Sheep	44.75	
		$25,741.50
Mixed Cars		3,755.26

Drive-Ins and Truck-Ins:

Cattle	476.00		
Calves	153.20		
Hogs	965.66		
Sheep	61.60		
		1,656.46	

Speculator-Yard Sales

Cattle & Calves	728.80		
Hogs	42.70		
Sheep	3.00		
		774.50	
		31,927.72	
Add Unlocated Difference		11.68	
Total Selling			$31,939.40

Buying

Straight Cars:

Cattle & Calves		75.00

Drive-Outs and Truck-Outs:

Cattle	4.20		
Sheep	15.20		
		19.40	
		94.40	
Less Unlocated Difference		8.20	
Total Buying			86.20

[fol. 784] Firm No. 53

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

Straight Cars:

	Cars		
	S. D.	D. D.	Head
Cattle & Calves	944	...	26,090
Hogs	508	...	37,283
Sheep	3	...	306
	1,455	...	63,679

Mixed Cars:

Cattle & Calves	198	...	2,146
Hogs			8,730
Sheep			223
	198	...	11,099

Drive-Ins and Truck-Ins:

	Cars		
	S. D.	D. D.	Head
Cattle	....	...	605
Calves	....	...	381
Hogs	....	...	3,334
Sheep	....	...	265
			4,585
Speculator—Yard Sales:			
Cattle & Calves	....	...	1,819
Hogs	....	...	537
Sheep	....	...	15
			2,371
Total Selling	1,653	...	81,734

Buying

Straight Cars:

Cattle & Calves	5	...	219
Drive-Outs and Truck-Outs:			
Cattle	....	...	5
Sheep	....	...	76
			81
Total Buying	5	...	300

[fol. 785] Ex. 60.

Auditor's Report Year Ended December 31, 1925

Firm No. 54

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$12.55		
Cash in Bank	2,985.36		
		$2,997.91	
Accounts Receivable		9,912.50	
Notes Receivable	78,870.20		
Less: Notes Rec. Discd.	52,550.88		
		26,319.32	
Miscellaneous		271.55	
Total Current Assets			$39,501.28

Fixed:			
Office & Operating Equipment		1,626.72	
Total Fixed Assets			1,626.72
Total Assets			$41,128.00

Liabilities and Net Worth

Current:			
Estray Account		$523.74	
Accounts Payable, Yd. Co.	$1,215.94		
Accounts Payable, Other	876.69		
		2,092.63	
Notes Payable		27,365.18	
Total Current Liabilities			$29,981.55
Net Worth:			
Capital		11,146.45	
Total Net Worth			11,146.45
Total Liabilities and Net Worth.....			$41,128.00

[fol. 786] **Firm No. 54**

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

	Assets		
Current:			
Cash on Hand	$40.93		
Cash in Bank—General	1,663.10		
Cash in Bank—Shippers Proceeds Acct.	637.53		
		$2,341.56	
Proceeds Receivable		83.15	
Accounts Receivable		6,915.09	
Notes Receivable	90,544.90		
Less: Notes Rec. Disctd.	62,680.77		
		27,864.13	
Total Current Assets		$37,203.93	
Fixed:			
Office & Operating Equipment		1,626.72	
Total Fixed Assets			1,626.72
Total Assets			$38,830.65

Liabilities and Net Worth

Current:			
Proceeds Payable		$57.38	
Estray Account		.51	
Accounts Payable, Yard Co.	$624.36		
Accounts Payable, Other	615.71		
		1,240.07	
Notes Payable		29,300.00	
Total Current Liabilities			$30,597.96
Net Worth:			
Capital		8,232.69	
Total Net Worth			8,232.69
Total Liabilities and Net Worth			$38,830.65

[fol. 787] Firm No. 54

South Omaha, Nebraska

Profit and Loss Statement Year Ended Decembers 31, 1925

Exhibit C.

Income:			
Selling Commission	$13,148.52		
Buying Commission	1,804.75		
		$14,953.27	
Clearance Commission		7,732.60	
Split Commission		4.00	
Miscellaneous Income		1,114.00	
Gross Income		23,803.87	
Less: Deductions		67.78	
Total Operating Income			$23,736.09
Expenses:			
Owners Salaries:			
Salesman	$4,800.00		
		4,800.00	
Non-Owners Salaries:			
Salesmen	6,860.00		
Order Buyers	320.00		
Yardmen	467.00		
Office	1,855.00		
Extra Help	20.00		
Com. Paid as Salary.	442.97		
		9,964.97	
Total Salaries			14,764.97

Bonuses Paid	50.00		
Travel & Entertainment	532.50		
Advertising	1,776.87		
Rent	840.00		
Telephone & Telegraph	467.81		
Stationery & Office Expense	652.51		
General Postage	79.60		
Charity & Donations	25.00		
Horse & Saddle	3.00		
Insurance	116.20		
Taxes	36.87		
Bond Premiums	70.00		
Exchange Assessments & Dues	218.48		
Meals	533.80		
Errors & Adjustments	10.21		
Miscellaneous	130.88		
		5,543.73	
Total Operating Expenses			20,308.70
Net Operating Profit			3,427.39
Other Income:			
Interest			791.53
			4,218.92
Other Deductions:			
Interest		2,263.45	
Loan Expense		2.80	
Loss Yard Co. Account		184.42	
			2,450.67
Net Gain			$1,768.25

[fol. 788] Firm No. 54

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924		$11,146.45
Additions:		
Net Gain	$1,768.25	
Additional Investment	2,820.75	
Other	682.63	
Total		5,271.63
		16,418.08
Deductions:		
Withdrawals	7,259.09	
Other	926.30	
		8,185.39
Net Worth, December 31, 1925		$8,232.69

[fol. 789]

Firm No. 54

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners Salaries:			
#1. Sheep Salesman	12 Mos.	$4,800.00	
Total Owners Salaries			$4,800.00
Non-Owners Salaries:			
Salesmen:			
#2. Cattle Salesman	12 Mos.	1,920.00	
#3. Cattle Salesman	12 "	2,800.00	
#4. Hog Salesman	12 "	2,140.00	
Total Salesmen		6,860.00	
Buyer:			
#5. Cattle Buyer	2 "	320.00	
Yardmen:			
#6. Yardman	1 "	100.00	
#7. Yardman	4 "	367.00	
Total Yardmen		467.00	
Office:			
#8. Cashier & Bookkeeper	12 "	1,755.00	
#9. Clerk	2 "	100.00	
		1,855.00	
Extra Help		20.00	
Commission Paid as Salary		442.97	
Total Non-Owners Salaries			9,964.97
Total Salaries			$14,764.97

[fol. 790]

Firm No. 54

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$6,937.01	
Hogs	2,658.60	
Sheep	898.79	
		$10,494.40
Mixed Cars		1,109.93

Drive-Ins and Truck-Ins:			
Cattle	180.80		
Calves	38.55		
Hogs	330.14		
Sheep	28.60		
		578.09	
Dealer and Speculator Sales:			
Cattle	581.50		
Calves	1.60		
Hogs	7.00		
Sheep	376.00		
		966.10	
Total Selling Commission			$13,148.52

Buying

Straight Cars:			
Cattle	727.25		
Sheep	1,060.00		
		1,787.25	
Drive-Outs and Truck-Out Purchases:			
Cattle		3.00	
Dealer and Speculator Purchases:			
Cattle	7.50		
Hogs	7.00		
		14.50	
Total Buying Commission			1,804.75
Total Commission (Selling & Buying)			$14,953.27

[fol. 791] Firm No. 54

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

Straight Cars:

	No. Cars		
	S. D.	D. D.	No. Head
Cattle and Calves	369	..	9,630
Hogs	185	1	13,415
Sheep	4	41	10,214
Total	558	..	33,259

Mixed Cars:

Cattle	56	..	518
Calves			83
Hogs			2,538
Sheep			76
Total	56	..	3,215

	No. Cars S. D.	No. Cars D. D.	No. Head
Drive-Ins and Truck-Ins:			
Cattle	....	..	229
Calves	....	..	96
Hogs	....	..	1,208
Sheep	....	..	143
Total			1,676
Dealer and Speculator Sales:			
Cattle	....	..	1,301
Calves	....	..	6
Hogs	....	..	81
Sheep	....	..	9,389
Total			10.777
Total Selling	614	42	48,927
Buying			
Straight Cars:			
Cattle & Calves	46	..	1,533
Sheep	10	46	15,397
Total	56	46	16,930
Drive-Out and Truck-Out Purchases:			
Cattle	....	..	3
Dealer and Speculator Purchases:			
Cattle	....	..	25
Hogs	....	..	71
Total	....	..	96
Total Buying	56	46	17,029
Total Volume (Selling & Buying)..	670	88	65,956

[fol. 792]

Ex. 61

Auditor's Report Year Ended December 31, 1925

Firm No. 55

South Omaha, Nebraska

Balance Sheet as at January 1, 1925

Exhibit A.

	Assets	
Current:		
Cash in Bank	$1,000.00	..
Total Assets		$1,000.00

Liabilities and Net Worth

Net Worth:		
Capital	$1,000.00	
Total Liabilities and Net Worth		$1,000.00

[fol. 793] Firm No. 55

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash—General Acct.	$228.56		
" —Proceeds Acct.	137.65		
Total Current Assets		$366.21	
Fixed:			
Office & Operating Equipment	3,000.00		
Memberships	11,003.85		
Total Fixed Assets		14,003.85	
Deferred		3.08	
Total Assets			$14,373.14

Liabilities and Net Worth

Current:			
Proceeds Payable	$138.00		
Accounts Payable—Yard Co... $7.30			
" " —Other 12.52			
	19.82		
Total Current Liabilities		$157.82	
Net Worth:			
Capital		14,215.32	
Total Liabilities and Net Worth			$14,373.14

[fol. 794] Firm No. 55

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions	$7,718.67		
Buying Commissions	1,144.55		
		$8,863.22	
Miscellaneous Income		617.66	
Gross Operating Income		9,480.88	
Less Deductions		30.05	
Net Operating Income			$9,450.83

Expenses:			
Non-Owners' Salaries:			
Salesmen	2,603.00		
Yardmen	810.00		
Office	1,170.00		
Extra Help	137.00		
Total Salaries		4,720.00	
Split Commissions Paid	4.62		
Advertising	616.76		
Travel and Entertainment	847.98		
Rent	840.00		
Telephone & Telegraph	375.94		
Insurance	21.58		
Charity & Donations	33.54		
Horse & Saddle	25.44		
Taxes	12.28		
Stationery & Office Expenses	217.75		
Legal and Auditing	50.00		
Bond	85.00		
General Postage	5.00		
Exchange Assessments & Dues	177.01		
Unexplained	7.02		
Miscellaneous	133.89		
		3,453.81	
Total Operating Expenses			8,173.81
Net Operating Profit			1,277.02
Other Income			7.39
Miscellaneous			1,284.41
Other Deductions:			
Miscellaneous			826.08
Net Gain			$458.33

[fol. 795]

Firm No. 55

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth January 1, 1925			$1,000.00
Additions:			
Net Gain	$458.33		
Additional Investment	14,637.10		
		15,095.43	
			16,095.43
Deductions:			
Other			1,880.11
Net Worth December 31, 1925			$14,215.32

[fol. 796] Firm No. 55

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule #1.

Non-Owners Salaries:

		Mos.		
#1	Cattle Salesman	9	$1,265.00	
#2	Hog Salesman	5	868.00	
#3	Hog Salesman	1	200.00	
#4	Hog Salesman	2	270.00	
	Total Salesmen Salaries			$2,603.00
#5	Cattle Yardman	5½	550.00	
#6	Cattle Yardman	1	140.00	
#7	Sheep Yardman	1½	120.00	
	Total Yardmen Salaries			810.00
#8	Bookkeeper	9	1,125.00	
#9	Stenographer	¾	45.00	
	Total Office Salaries			1,170.00
	Extra Help, Various			137.00
	Total Salaries			$4,720.00

[fol. 797] Firm No. 55

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

	Selling	
Straight Cars:		
Cattle & Calves	$1,966.33	
Hogs	1,034.70	
Sheep	3,219.85	
		$6,220.88
Mixed Cars		462.81
Drive-Ins and Truck-Ins:		
Cattle	71.08	
Calves	31.20	
Hogs	127.94	
Sheep	246.00	
		476.22
Dealers and Speculators:		
Cattle & Calves	433.60	
Hogs	112.56	
Sheep	12.60	
		558.76
Total Selling Commissions		$7,718.67

Buying

Straight Cars:

Cattle & Calves	557.45	
Sheep	442.00	
		999.45

Drive-Outs and Truck-Outs:

Cattle	88.50	
Calves	10.40	
Hogs	9.00	
Sheep	37.20	
		145.10
Total Buying Commissions		$1,144.55

[fol. 798] **Firm No. 55**

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

Straight Cars:

	Cars	Head
Cattle & Calves	101	2,730
Hogs	71	5,181
Sheep	164	43,743
	336	51,654

Mixed Cars:

Cattle & Calves.		287
Hogs	23	852
Sheep		300
	23	1,439

Drive-Ins and Truck-Ins:

Cattle	..	88
Calves	..	78
Hogs	..	461
Sheep	..	2,526
	..	3,153

Dealers and Speculators:

Cattle & Calves	..	963
Hogs	..	1,141
Sheep	..	168
	..	2,272
Total Volume Selling	383	58,518

Buying

	Cars	Head
Straight Cars:		
Cattle & Calves	33	913
Sheep	23	6,020
	56	6,933
Drive-Outs and Truck-Outs:		
Cattle	..	110
Calves	..	26
Hogs	..	270
Sheep	..	189
	..	595
Total Buying	56	7,528

[fol. 799] Ex. 62

Auditor's Report Year Ended December 31, 1925

Firm No. 56

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Cash on Hand	$70.00		
Cash in Bank	1,342.13		
		$1,412.13	
Accounts Receivable		797.03	
Notes Receivable		659.84	
Total Current Assets			$2,869.00
Fixed:			
Membership		2,550.00	
Office & Operating Equipment	4,805.00		
Less Depreciation Reserve	1,640.49		
		3,164.51	
Total Fixed Assets			5,714.51
Total Assets			$8,583.51

Liabilities and Net Worth

Current:	
Accounts Payable (Other)	$2,845.04
Net Worth:	
Capital	5,738.47
Total Liabilities and Net Worth	$8,583.51

[fol. 800] Firm No. 56

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets			
Current:			
Cash on Hand	$70.00		
Cash in Bank	680.10		
		$750.10	
Accounts Receivable		10,396.17	
Notes Receivable		981.81	
Total Current Assets			$12,128.08
Fixed:			
Memberships		2,550.00	
Office & Operating Equipment	4,925.00		
Less Reserve for Depreciation	749.24		
		4,175.76	
Total Fixed Assets			6,725.76
Total Assets			$18,853.84
Liabilities and Net Worth			
Current:			
Proceeds Payable (Estrays)		$131.58	
Accounts Payable (Other)		.80	
Total Current Liabilities			$132.38
Net Worth:			
Capital			18,721.46
Total Liabilities and Net Worth			$18,853.84

[fol. 801] Firm No. 56

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commission	$36,868.91		
Buying Commission	4,286.41		
		$41,155.32	
Less Deductions		244.82	
Total Operating Income			$40,910.50
Expenses:			
Owners' Salaries:			
Salesmen	6,600.00		
Total Owners' Salaries		6,600.00	

Non-Owners' Salaries:			
Salesmen	4,571.65		
Yardmen	4,510.00		
Office	3,000.00		
Extra Help	76.66		
Commission Paid as Salary	61.40		
Total General Salaries		12,219.71	
Total Salaries		18,819.71	
Travel & Entertainment	2,326.38		
Advertising	1,915.96		
Rent	390.00		
Telephone & Telegraph	343.86		
Stationery & Office Expense	588.37		
General Postage	310.75		
Charity & Donations	9.00		
Horse & Saddle	45.00		
Insurance	336.39		
Taxes	59.06		
Bond Premiums	92.50		
Exchange Assessments & Dues	620.19		
Legal & Auditing	305.00		
Meals	153.20		
Miscellaneous	125.70		
Total General Expense		7,621.36	
Total Operating Expense			26,441.07
Net Operating Profit			14,469.43
Other Income			265.52
			14,734.95
Other Deductions			419.79
Net Gain			$14,315.16

[fol. 802]

Firm No. 56

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924			$5,738.47
Additions:			
Net Gain			14,315.16
			20,053.63
Deductions:			
Withdrawals	$1,090.92		
Rent Prior paid in 1925	32.50		
Loss on Sale of Assets	208.75		
		1,332.17	
		1,332.17	
Net Worth, December 31, 1925			$18,721.46

[fol. 803] Firm No. 56

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule #1.

Owners' Salaries:			
Salesmen:			
No. 1 Cattle Salesman	Full Time.....	$3,600.00	
No. 2 Hog Salesman	" "	3,000.00	
Total Owners' Salaries			$6,600.00
Non-Owners' Salaries:			
Salesmen:			
No. 3 Cattle Salesman	9 Months.....	2,475.00	
No. 4 Cattle Salesman	3 "	1,125.00	
No. 5 Cattle Salesman	3½ "	971.65	
Total Salesmen			4,571.65
Yardmen:			
No. 6 Cattle Yardman	Full Time.....	1,800.00	
No. 7 Cattle Yardman	Full Time.....	1,350.00	
No. 8 Cattle Yardman	2 Months.....	100.00	
No. 9 Hog Yardman	Full Time.....	1,260.00	
Total Yardmen			4,510.00
Office:			
No. 10	11 Months.....	1,650.00	
No. 11	Full Time.....	1,200.00	
No. 12	1 Month.....	150.00	
Total Office			3,000.00
Extra Help:			
Extra Office Help, Various.....		26.66	
Extra Yard Help, Various.....		50.00	
Total Extra Help			76.66
Commission Paid as Salary:			
One-half Commission paid for selling Sheep.....			61.40
Total Salaries			$18,819.71

[fol. 804] Firm No. 56

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle & Calves	$24,986.58		
Hogs	5,847.60		
Sheep	34.00		
		$30.868.18	
Mixed Cars		1,714.50	
Drive-Ins and Truck-Ins:			
Cattle	926.25		
Calves	114.40		
Hogs	612.13		
Sheep	31.60		
		1,684.38	
Dealer and Speculator Sales:			
Cattle	2,552.85		
Hogs	49.00		
		2,601.85	
Total Selling Commission			$36,868.91

Buying

Straight Cars:			
Cattle & Calves	4,142.46		
Hogs	47.60		
Sheep	14.00		
		4,204.06	
Drive-Outs and Truck-Outs:			
Cattle	60.25		
Calves	19.90		
Sheep	2.20		
		82.25	
Total Buying Commission			$4,286.41

[fol. 805] Firm No. 56

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle & Calves	1,301	..	35,150
Hogs	387	13	30,702
Sheep	1	1	304
	1,689	14	66,156

	No. Cars S. D.	No. Cars D. D.	Head
Mixed Cars:			
Cattle & Calves	91	..	927
Hogs			4,418
Sheep			46
	91	..	5,391
Drive-Ins and Truck-Ins:			
Cattle	...	..	1,189
Calves	...	..	285
Hogs	...	..	2,242
Sheep	...	..	158
	...	..	3,874
Dealer and Speculator Sales:			
Cattle	...	..	5,343
Hogs	...	..	512
			5,855
Total Selling	1,780	14	81,276
Buying			
Straight Cars:			
Cattle & Calves	263	..	7,462
Hogs	7	1	623
Sheep	1	..	116
	271	1	8,201
Drive-Outs and Truck-Outs:			
Cattle	...	..	90
Calves	...	..	60
Sheep	...	..	11
			161
Total Buying	271	1	8,362

[fol. 806]

Ex. 63

Auditor's Report, Year Ended December 31, 1925

Firm No. 57

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets			
Current:			
Cash in Bank	$6,507.63		
Accounts Receivable	164.17		
Total Current Assets		$6,671.80	
Total Assets			$6,671.80

Liabilities and Net Worth

Current:		
Accounts Payable—Yard Co.....	$638.91	
" " —Other	32.89	
Total Current Liabilities.....		$671.80
Net Worth:		
Capital Stock		6,000.00
Total Liabilities and Net Worth.....		$6,671.80

NOTE.—Capital Stock issued and outstanding 200 shares at $100.00 a share totaling $20,000.00, for which stockholders still owe $14,000.00.

[fol. 807] Firm No. 57

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:		
Cash in Bank.....	$4,480.33	
Accounts Receivable	174.17	
Total Current Assets.....		$4,654.50
Total Assets		$4,654.50

Liabilities and Net Worth

Current:		
Accounts Payable—Other.....		$200.00
Net Worth:		
Capital Stock	$4,500.00	
Deficit	135.50	
Total Net Worth.....		4,364.50
Total Liabilities and Net Worth.....		$4,654.50

NOTE.—Capital Stock issued and outstanding 150 shares at $106.00 a share totaling $15,000.00 for which stockholder still owes $10,500.00.

[fol. 808] Firm No. 57

South Omaha, Nebraska

Profit and Loss Statement, Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commission	$12,968.75	
Buying Commission	897.05	
Split Commission Received.....	31.16	
Total Operating Income.....		$13,896.96

Expenses:				
Owners' Salaries:				
Salesmen		6,000.00		
Non-Owners' Salaries:				
Salesmen	$3,000.00			
Yardmen	2,000.00			
Office	.....			
Extra Help	13.00			
Commission paid as salary	88.60			
		5,101.60		
		11,101.60		
Travel and Entertainment		87.32		
Advertising		1,095.09		
Rent		420.00		
Telephone and Telegraph		231.63		
Stationery and Office Expense		110.35		
General Postage		43.05		
Charity and Donations		10.00		
Horse and Saddle		219.70		
Insurance		5.20		
Taxes		45.58		
Bond Premiums		78.00		
Exchange Assessments and Dues		156.11		
Meals		351.95		
Miscellaneous		58.56		
Total Operating Expenses			14,014.14	
Net Operating Loss				$117.18
Other Income				3.20
Gain in Stockyards Account				113.98
Other Deductions:				
Loss in Stockyards Account				20.77
Net Gain				$134.75

[fol. 809]

Firm No. 57

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth December 31, 1924			$6,000.00
Deductions:			
Net Loss	$134.75		
Withdrawals	1,500.00		
Refund 1924 Commission	.75		
		1,635.50	
Net Worth December 31, 1925			$4,364.50

[fol. 810] Firm No. 57

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners:			
#1 Cattle Salesman	Full Time.....	$3,600.00	
#2 " "	" "	2,400.00	
Total Owners			$6,000.00
Non-Owners:			
x#3 Hog Salesman and Office	" "		3,000.00
*#4 Yardman and Office	" "	1,800.00	
#5 Hog Yardman	2 Mos.	200.00	
Total Yardmen			2,000.00
Extra Help			13.00
Commission paid as Salary (Sheep)			88.60
Total			$11,101.60

[fol. 811] Firm No. 57

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:		
Cattle and Calves	$6,238.58	
Hogs	3,513.41	
Sheep and Goats	60.80	
		$9,812.79
Mixed Cars		1,677.40
Truck-Ins:		
Cattle	177.29	
Calves	17.60	
Hogs	510.70	
Sheep	42.40	
		747.99
Yard Sales:		
Cattle and Calves	681.38	
Hogs	42.05	
		723.43
Total		12,961.61
Add Unlocated Difference		7.14
Total Selling		$12,968.75

x #3 Salesman 70%, Office 30%.
* #4 Cattle Yardman 70%, Office 30%.

Buying

Straight Cars:		
Cattle and Calves	806.25	
Sheep	82.00	
		888.25
Truck-Outs:		
Cattle	3.00	
Calves	4.00	
Hogs	1.80	
		8.80
Total Buying		$897.05

[fol. 812]

Firm No. 57

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle and Calves	344	...	8,741
Hogs	236	...	16,183
Sheep	4	...	442
	584	...	25,366
Mixed Cars:			
Cattle and Calves Hogs Sheep	90	...	1,131 3,507 44
	90	...	4,682
Truck-Ins:			
Cattle	...	...	275
Calves	...	...	44
Hogs	...	...	1,829
Sheep	...	...	212
	...	...	2,360
Dealers and Speculators:			
Cattle and Calves	...	...	1,554
Hogs	...	...	153
	...	...	1,707
Total Selling	674	...	34,115

Buying

	Cars		
	S. D.	D. D.	Head
Straight Cars:			
Cattle and Calves	53	...	1,739
Sheep	3	2	830
	56	2	2,569
Truck-Outs:			
Cattle	...	...	3
Calves	...	...	10
Hogs	...	...	9
	...	...	22
Total Buying	56	2	2,591

[fol. 813] Ex. 64

Auditor's Report Year Ended December 31, 1925

Firm No. 58

South Omaha, Nebraska

Balance Sheet as at January 2, 1925

Exhibit A.

Assets			
Current:			
Cash on Hand	$280.00		
Cash in Bank	4,358.61		
		$4,638.61	
Total Current Assets			$4,638.61
Fixed:			
Memberships		7,800.00	
Office & Operating Equipment		2,121.47	
Total Fixed Assets			9,921.47
Total Assets			$14,560.08
Liabilities and Net Worth			
Current:			
Accounts Payable—Yard Co.		960.08	
Total Current Liabilities			960.08
Net Worth:			
Capital			13,600.00
Total Liabilities and Net Worth			$14,560.08

[fol. 814] Firm No. 58

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash on Hand	$150.00		
Cash in Bank	5,615.78		
		$5,765.78	
Total Current Assets			$5,765.78
Fixed:			
Memberships		7,800.00	
Office & Operating Equipment		2,141.72	
Total Fixed Assets			9,941.72
Total Assets			$15,707.50

Liabilities and Net Worth

Current:			
Accounts Payable—Yard Co.		1,042.86	
Total Current Liabilities			1,042.86
Net Worth:			
			14,664.64
Total Liabilities and Net Worth			$15,707.50

[fol. 815] Firm No. 58

South Omaha, Nebraska

Profit and Loss Statement for Year Ended December 31, 1925

Exhibit C.

Income:			
Selling Commissions			$36,318.17
Buying Commissions			515.40
Total Commissions			$36,833.57
Expenses:			
Owners' Salaries:			
Salesmen	$10,400.00		
Non-Owners' Salaries:			
Salesmen	$7,140.00		
Office	4,440.00		
Yardmen	1,370.00		
Extra Help	239.10		
Commission paid as salary	213.90		
		13,403.00	
Total Salaries			23,803.00

Bonuses Paid	350.00	
Travel & Entertainment	1,690.15	
Advertising	3,688.59	
Rent	900.00	
Telephone & Telegraph	625.13	
Stationery & Office Expense	437.85	
General Postage	1,464.70	
Charity & Donations	138.00	
Horse & Saddle	798.05	
Insurance	402.82	
Taxes	70.22	
Bond Premiums	71.00	
Exchange Assessments & Dues	597.37	
Legal & Auditing	45.00	
Meals	249.05	
Miscellaneous	307.60	
		11,835.53
Total Operating Expenses		35,638.53
Net Operating Profit		1,195.04
Other Deductions		130.40
Net Gain		$1,064.64

[fol. 816] Firm No. 58

South Omaha, Nebraska

Reconciliation of Net Worth, Year Ended December 31, 1925

Exhibit D.

Net Worth January 2, 1925	$13,600.00	
Additions:		
Net Gain	1,064.64	
Net Worth December 31, 1925		$14,664.64

[fol. 817] Firm No. 58

South Omaha, Nebraska

Statement of Salaries for Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
# 1 Cattle Salesman,	12 Mos.	$6,200.00	
# 2 Cattle Salesman,	12 "	4,200.00	
Total Owners' Salaries			$10,400.00
Non-Owners' Salaries:			
# 3 Cattle Salesman,	12 Mos.	2,400.00	
# 4 Hog Salesman,	12 "	3,000.00	
# 5 Hog Salesman,	12 "	1,740.00	
Total Non-Owner Salesmen			7,140.00

# 6 Bookkeeper & Cashier,	12 Mos.....	2,700.00		
# 7 Asst. Bookkeeper & Stenographer,	12 "	1,740.00		
Total Non-Owner Office.....			4,440.00	
# 8 Cattle Yardman,	3 Mos.....	405.00		
# 9 Cattle & Hog Yardman,	4 "	500.00		
#10 Cattle & Hog Yardman,	3 " (about)	465.00		
Total Non-Owner Yardmen.....			1,370.00	
Extra Help—Office.....		15.00		
" " —Yardmen		206.10		
" " —Various		18.00		
Total Non-Owners Extra Help.....			239.10	
Commission Paid as Salary (½ Com. Sheep).....			213.90	
Total Non-Owners' Salaries.....			13,403.00	
Total Salaries.....				$23,803.00

[fol. 818]

Firm No. 58

South Omaha, Nebraska

Statement of Commissions, Year Ended December 31, 1925

Schedule 2.

	Selling		
Straight Cars:			
Cattle & Calves.....	$29,902.95		
Hogs	2,352.88		
Sheep	282.55		
		$32,538.38	
Mixed Cars.....		2,081.50	
Drive-Ins and Truck-Ins:			
Cattle	234.37		
Calves	62.00		
Hogs	487.40		
Sheep	50.20		
		833.97	
Dealers and Speculators:			
Cattle & Calves.....	842.60		
Hogs	23.60		
		866.20	
Total		36,320.05	
Less Unlocated Difference.....		1.88	
Total Selling			$36,318.17

Buying

Straight Cars:

Cattle & Calves	465.00	
Sheep	48.00	
		513.00

Drive-Outs and Truck-Outs:

Cattle	2.40
Total Buying	**$515.40**

[fol. 819] **Firm No. 58**

South Omaha, Nebraska

Statement of Volume, Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	D. D.	S. D.	No. Head
Straight Cars:			
Cattle & Calves	..	1,557	42,051
Hogs	15	141	11,305
Sheep	1	14	2,913
	16	1,712	56,269
Mixed Cars:			
Cattle & Calves Hogs Sheep	1	110	1,431 3,651 472
	1	110	5,554
Drive-Ins and Truck-Ins:			
Cattle	..	....	295
Calves	..	....	155
Hogs	..	....	1,802
Sheep	..	....	251
	..	....	2,503
Dealers and Speculators:			
Cattle and Calves	..	....	2,102
Hogs	..	....	59
			2,161
Total Selling	17	1,822	66,487

Buying

Straight Cars:

Cattle and Calves	..	31	375
Sheep	..	3	449
	..	34	824

	No. Cars		
	D. D.	S. D.	No. Head
Drive-Outs and Truck-Outs:			
Cattle	..	....	3
Total Buying	..	34	827

[fol. 820]

Ex. 65

Auditor's Report, Year Ended December 31, 1925

Firm No. 60

South Omaha, Nebraska

Balance Sheet as at December 31, 1924

Exhibit A.

Assets

Current:			
Proceeds Receivable	$946.69		
Accounts Receivable	626.22		
Total Current Assets		$1,572.91	
Fixed:			
Office and Operating Equipment	15.00		
Total Fixed Assets		15.00	
Deferred:			
Unadjusted Differences	6.38		
Total Deferred Assets		6.38	
Total Assets			$1,594.29

Liabilities and Net Worth

Current:			
Bank Overdraft	$471.62		
Accounts Payable (Yard)	925.61		
Total Current Liabilities		$1,397.23	
Net Worth:			
Capital	197.06		
Total Net Worth		197.06	
Total Liabilities and Net Worth			$1,594.29

[fol. 821] Firm No. 60

South Omaha, Nebraska

Balance Sheet as at December 31, 1925

Exhibit B.

Assets

Current:			
Cash in Bank (General)	$189.88		
Cash in Bank (Shippers Proceeds)	714.69		
Proceeds Receivable	226.54		
Accounts Receivable	584.06		
Total Current Assets		$1,715.17	
Fixed:			
Office and Operating Equipment	15.00		
Total Fixed Assets		15.00	
Total Assets			$1,730.17

Liabilities and Net Worth

Current:			
Accounts Payable (Yard)	$400.98		
Accounts Payable (Other)	2.73		
Total Current Liabilities		$403.71	
Net Worth:			
Capital	1,326.46		
Total Net Worth		1,326.46	
Total Liabilities and Net Worth			$1,730.17

[fol. 822] Firm No. 60

South Omaha, Nebraska

Profit and Loss Statement Year Ended December 31, 1925

Exhibit C.

Income:		
Selling Commissions	$11,715.46	
Buying Commissions	1,429.70	
Total Operating Income		$13,145.16
Expenses:		
Owners' Salarise:		
Salesman	2,405.29	

Non-Owners' Salaries:			
Salesmen	$6,406.65		
Commission paid as Salary	26.90		
Total Non-Owners		6,433.55	
Total Salaries		8,838.84	
Travel and Entertainment		499.10	
Advertising		1,200.86	
Rent		390.00	
Telephone and Telegraph		139.94	
Stationery & Office Expense		90.97	
Taxes		9.76	
Charity and Donations		10.00	
Bond Premiums		50.74	
Exchange Assessments and Dues		211.02	
Legal and Auditing		20.00	
Errors and Adjustments		63.41	
Miscellaneous		145.34	
Total Operating Expenses			11,669.98
Net Operating Profit			1,475.18
Other Deductions:			
Interest		.58	
Bad Debts		151.72	
Loss on Food Account		193.48	
			345.78
Net Gain			$1,129.40

[fol. 823] Firm No. 60

South Omaha, Nebraska

Reconciliation of Net Worth Year Ended December 31, 1925

Exhibit D.

Net Worth, December 31, 1924	$197.06
Additions:	
Net Gain	1,129.40
Net Worth, December 31, 1925	$1,326.46

[fol. 824] Firm No. 60

South Omaha, Nebraska

Statement of Salaries Year Ended December 31, 1925

Schedule 1.

Owners' Salaries:			
$1 Cattle Salesman	Full time		$2,405.29

Non-Owners' Salaries:

*$2 Cattle Salesman & Office	" "	2,648.44
$3 Hog Salesman	4 Months	832.20
$4 " "	Full time	2,926.01
Total Salesmen		6,406.65
Commission paid as Salary		26.90
Total Non-Owners' Salaries		6,433.55
Total Salaries		$8,838.84

[fol. 825] Firm No. 60

South Omaha, Nebraska

Statement of Commissions Year Ended December 31, 1925

Schedule 2.

Selling

Straight Cars:			
Cattle and Calves	$3,909.63		
Hogs	5,503.89		
Sheep	14.00		
		$9,427.52	
Mixed Cars		1,414.60	
Drive-Ins and Truck-Ins:			
Cattle	85.25		
Calves	5.10		
Hogs	184.10		
Sheep	2.20		
		276.65	
Speculator—Yard Sales:			
Cattle	476.65		
Calves	10.50		
Hogs	132.58		
		619.73	
		11,738.50	
Less Difference—Unlocated		23.04	
Total Selling			$11,715.46

Buying

Straight Cars:			
Cattle & Calves	1,361.20		
Hogs	24.00		
		1,385.20	
Drive-Outs and Truck-Outs:			
Cattle & Calves		44.50	
Total Buying			$1,429.70

*Cattle Salesman 50%..... $1,324.22
Office 50%..... 1,324.22

[fol. 827]

EXHIBIT 66

Map Union Stock Yards Omaha. Not material herein.

EXHIBIT 67 (a-b-c)

Receipts and Disposition of Live Stock January to March, 1926, Inclusive, Compared with the Same Months 1925

Union Stock Yards Company of Omaha [Limited]

Receipts and Disposition of Live Stock for Month of January, 1926, Compared with January, 1925

Receipts

	Cattle		Calves		Hogs		Sheep		Horses & Mules		Total	Cars
Railroads	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925
C. & N. W. R., East...	5,021	3,885	208	197	10,482	11,746	211	743	173	165	351	294
C. & M. W. Ry., West..	25,627	27,996	1,379	1,211	125,369	160,601	24,220	20,633	458	289	2,900	3,245
C. B. & Q. Ry., East...	5,000	4,598	219	250	4,129	7,894	2,938	2,769	146	266	289	333
C. B. & Q. Ry., West...	22,399	26,100	1,523	1,594	33,009	65,393	57,535	65,453	216	203	,692	2,222
C. G. W. Ry.....	2,956	1,425	103	51	4,252	3,906	.....	941	19	15	172	124
C. M. & St. P. Ry....	2,067	1,958	180	120	8,762	9,144	744	.....	73	.....	207	195
C. R. I. & P. Ry., East.	6,450	5,590	299	224	6,832	13,910	1,235	2,359	167	183	385	450
C. R. I. & P. Ry., West.	1,809	1,992	100	51	4,096	5,372	1,392	1,079	138	.....	148	155
C. St. P. M. & O. Ry...	9,305	11,751	108	182	21,026	28,279	1,633	4,616	43	80	713	935
Illinois Central Ry.....	3,664	3,421	162	166	6,011	7,579	467	615	47	11	219	206
Mo. Pac. Ry.....	930	1,149	175	65	2,532	4,068	2,610	1,072	27	18	92	110
U. P. R. R.....	27,874	34,518	1,315	1,401	47,045	93,254	61,118	54,150	149	152	2,097	2,799
Wabash R. R.....	529	622	11	18	344	290	330	469	18	32	32	36
Driven in.....	8,126	5,282	2,197	1,667	48,887	44,143	17,901	20,874	220	162	.....	.....
Grand Total.....	121,757	130,287	7,979	7,197	322,776	455,569	172,334	175,773	1,894	1,576	9,297	11,104
Increase for Month....	.....	.....	782	.....	.....	.....	.....	.....	318	.....	.....	.....
Decrease for Month...	8,530	.....	.....	.....	132,793	.....	3,439	.....	.....	.....	1,807	.....

From Jan. 1st to Date.	121,757	130,287	7,979	7,197	322,776	455,569	172,334	175,773	1,894	1,576	9,297	11,104
Increase	.....	.....	782	.....	.....	.....	.....	.....	318	.....	.....	.....
Decrease	8,530	.....	.....	.....	132,793	.....	3,439	.....	.....	.....	1,807	.....
Average Weight of Hogs	.....	.....	.....	.....	244	213	.....	.....	.....	.....	.....	.....

Disposition

C. & N. W. R., East...	4,532	5,087	440	60	20,440	8,006	4,122	6,557	73	50	353	291
C. & N. W. Ry., West..	2,298	3,031	601	173	.....	75	5,408	3,599	172	225	116	116
C. B. & Q. Ry., East...	7,205	9,827	638	205	8,931	16,845	11,319	10,841	150	69	404	579
C. B. & Q. Ry., West...	2,350	3,076	254	.....	.....	1,589	467	1,019	79	93	89	124
C. G. W. Ry.....	604	814	152	50	.....	.....	2,568	1,499	2	.....	45	35
C. M. & St. P. Ry....	4,303	3,762	65	.....	7,968	2,652	9,722	2,099	.....	.....	287	167
C. R. I. & P. Ry., East.	3,213	3,374	60	90	2,893	853	2,754	50	64	.....	162	129
C. R. I. & P. Ry., West.	822	949	110	100	432	512	335	1,869	43	19	38	44
C. St. P. M. & O. Ry...	2,020	1,715	50	.....	.....	.....	1,457	1,302	24	19	71	63
Illinois Central Ry....	1,063	1,125	352	152	.....	1,189	132	315	.....	.....	39	62
Mo. Pac. Ry.....	3,588	4,172	111	.....	46,603	44,110	1,837	916	210	41	565	557
U. P. R. R.....	3,376	3,109	255	321	5,239	164	2,584	1,957	160	177	184	124
Wabash R. R.....	1,556	1,610	220	.....	22,937	17,289	486	325	423	435	241	215
Total Shipments.....	36,930	41,651	3,308	1,151	115,443	93,284	43,191	32,348	1,400	1,128	2,594	2,506
Driven Out.....	2,286	2,810	13	156	449	4,246	4,942	7,824	.....	.....	.....	.....
Consumed in S. Omaha.	82,541	85,826	4,658	5,890	206,884	358,039	124,201	135,601	.....	.....	.....	.....
Grand Total.....	121,757	130,287	7,979	7,197	322,776	455,569	172,334	175,773	.....	.....	.....	.....
Consumed in S. Omaha From Jan. 1st to Date.	82,541	85,826	4,658	5,890	206,884	358,039	124,201	135,601	.....	.....	.....	.....
Stockers and Feeders to Country.....	23,812	23,291	.....	.....	125	334	19,728	11,106	.....	.....	.....	.....

South Omaha, Nebraska, January 31, 1926. M. L. Shawcross, Secretary.

Union Stock Yards Company of Omaha [Limited]

Receipts and Disposition of Live Stock for Month of February, 1926, Compared with February, 1925

[fol. 828]

Receipts

	Cattle		Calves		Hogs		Sheep		Horses & Mules		Total	Cars
Railroads	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925
C. & N. W. R., East...	2,957	3,858	145	157	5,974	13,586	710	471	107	211	207	321
C. & N. W. Ry., West..	20,343	18,891	1,053	1,107	95,164	146,298	16,869	13,218	525	433	2,298	2,692
C. B. & Q. Ry., East...	3,743	3,612	204	149	2,692	6,903	1,70	118	194	268	219	258
C. B. & Q. Ry., West...	22,617	21,096	1,423	1,662	30,349	55,631	75,561	65,269	561	341	1,741	1,921
C. G. W. Ry.....	1,219	1,344	205	29	2,235	4,132	318	264	7	45	91	122
C. M. & St. P. Ry....	1,266	1,767	109	137	5,924	8,617	908	527	45	49	137	193
C. R. I. & P. Ry., East.	4,468	4,700	362	230	6,110	13,779	1,212	927	75	256	291	403
C. R. I. & P. Ry., West.	1,895	1,056	89	64	2,906	4,095	.....	2,381	303	.....	135	107
C. St. P. M. & O. Ry...	8,181	8,303	107	169	14,975	25,121	2,639	1,425	74	60	603	722
Illinois Central Ry....	2,675	2,508	141	182	3,135	6,351	.....	.....	.....	7	147	179
Mo. Pac. Ry.....	1,338	1,587	93	154	1,736	3,582	1,856	1,134	19	34	97	127
U. P. R. R.....	28,389	26,916	1,576	1,502	50,419	84,038	66,334	89,869	112	248	2,212	2,543
Wabash R. R.....	295	636	8	20	435	715	204	127	.....	21	20	39
Driven in.....	6,746	4,001	1,908	1,245	36,064	33,765	16,486	17,740	250	220	.....	.....
Grand Total.....	106,132	100,275	7,423	6,807	258,118	406,613	184,768	193,477	2,272	2,193	8,198	9,627
Increase for Month....	5,857	.....	616	.....	.....	.....	.....	.....	79	.....	.....	.....
Decrease for Month...	.....	.....	.....	.....	148,495	.....	8,709	.....	.....	.....	1,429	.....
From Jan. 1st to Date..	227,889	230,562	15,402	14,004	580,894	862,182	357,102	369,250	4,166	3,769	17,495	20,731
Increase	.....	.....	1,398	.....	.....	.....	.....	.....	397	.....	.....	.....
Decrease	2,673	.....	.....	.....	281,288	.....	12,148	.....	.....	.....	3,236	.....
Ave. Weight of Hogs..	.....	.....	.....	.....	251	217	.....	.....	.....	.....	.....	.....

Disposition

C. & N. W. R., East...	4,107	5,670	253	274	18,898	7,964	7,337	18,486	188	47	342	344
C. & N. W. Ry., West..	1,822	1,867	213	.....	132	140	1,153	1,464	78	129	74	74
C. B. & Q. Ry., East...	7,224	7,507	212	204	9,549	13,356	13,216	24,601	331	259	429	521
C. B. & Q. Ry., West...	2,083	1,829	.....	227	340	.....	437	3,281	199	155	82	83
C. G. W. Ry.....	756	1,131	.....	.....	268	.....	2,682	684	20	74	41	45
C. M. & St. P. Ry.....	5,035	4,965	345	101	9,751	5,111	9,087	2,559	63	.....	332	247
C. R. I. & P. Ry., East.	2,737	2,603	173	208	3,780	1,747	3,956	714	192	.....	170	108
C. R. I. & P. Ry., West.	114	174	.....	.....	.....	.....	750	2,969	22	18	8	22
C. St. P. M. & O. Ry...	725	1,334	159	100	144	140	1,251	1,009	19	52	40	54
Illinois Central Ry....	780	1,454	180	108	861	3,320	819	808	43	3	45	92
Mo. Pac. Ry.....	2,864	3,970	89	59	20,764	44,709	148	793	118	177	457	503

C. R. I. & P. Ry., East.	2,737	2,603	173	208	3,780	1,747	3,956	714	192	.....	170	108
C. R. I. & P. Ry., West.	114	174	.....	.....	.....	.....	750	2,969	22	18	8	22
C. St. P. M. & O. Ry...	725	1,334	159	100	144	140	1,251	1,009	19	52	40	54
Illinois Central Ry....	780	1,454	180	108	861	3,320	819	808	43	3	45	92
Mo. Pac. Ry.....	2,864	3,070	89	50	39,764	44,790	148	793	118	177	457	503
U. P. R. R.....	1,966	1,930	55	212	3,372	88	3,352	1,767	193	84	119	78
Wabash R. R.....	1,679	1,587	50	.....	14,665	16,785	2,472	2,904	224	749	189	247
Total Shipments.....	31,892	35,121	1,729	1,484	101,524	93,441	46,560	62,039	1,690	1,747	2,328	2,418
Driven Out.....	1,641	2,367	.....	71	1,006	1,492	2,575	4,607	.....	.....	.....	.....
Consumed in S. Omaha.	72,599	62,787	5,694	5,252	155,588	311,680	135,533	126,831	.....	.....	.....	.....
Grand Total.....	106,132	100,275	7,423	6,807	258,118	406,613	184,768	193,477	.....	.....	.....	.....
Consumed in S. Omaha From Jan. 1st to Date	155,140	148,613	10,352	11,142	362,472	669,719	259,734	262,432	.....	.....	.....	.....
Stockers and Feeders to Country.....	17,004	19,558	.....	.....	917	566	15,094	14,970	.....	.....	.....	.....

South Omaha, Nebraska, February 28, 1926. M. L. Shawcross, Secretary.

[fol. 829] Union Stock Yards Company of Omaha [Limited]

Receipts and Disposition of Live Stock for Month of March, 1926, Compared with March, 1925

Receipts

	Cattle		Calves		Hogs		Sheep		Horses & Mules		Total Cars	
Railroads	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925	1926	1925
C. & N. W. R., East...	3,631	4,774	170	262	7,726	9,723	266	.....	122	184	269	326
C. & N. W. Ry., West..	26,830	24,466	1,101	1,139	97,323	102,413	11,057	14,189	363	258	2,570	2,461
C. B. & Q. Ry., East...	4,437	5,156	270	218	3,548	5,466	1,545	4	83	233	250	302
C. B. & Q. Ry., West...	33,692	29,837	1,732	2,493	35,706	48,492	110,168	91,578	185	320	2,409	2,356
C. G. W. Ry.....	1,053	1,432	48	50	2,115	2,600	.....	.....	.....	30	77	100
C. M. & St. P. Ry....	931	1,559	70	155	5,537	6,240	16	55	1	124	118	151
C. R. I. & P. Ry., East.	4,445	5,939	313	358	6,519	9,713	.....	197	55	105	283	393
C. R. I. & P. Ry., West.	1,791	1,185	140	85	2,505	2,529	667	1,418	103	71	121	97
C. St. P. M. & O. Ry...	8,835	9,355	166	183	16,041	15,688	2,066	2,059	27	50	638	648
Illinois Central Ry....	2,568	3,216	205	282	2,789	3,279	.....	.....	.....	50	132	165
Mo. Pac. Ry.....	1,492	1,923	123	433	1,692	2,623	2,386	887	26	33	109	126
U. P. R. R.....	41,431	33,907	1,887	2,154	60,839	71,171	113,199	113,481	104	169	3,111	2,799
Wabash R. R.....	766	983	1	57	208	730	.....	.....	15	22	33	52
Driven in.....	8,465	5,576	2,889	2,182	51,579	34,024	22,947	5,473	327	189	.....	.....
Grand Total.....	140,367	129,308	9,115	10,051	294,127	314,691	264,317	229,341	1,411	1,838	10,120	9,976
Increase for Month....	11,059	.....	.....	.....	.....	.....	34,976	.....	.....	.....	144	.....
Decrease for Month...	.....	.....	936	.....	20,564	.....	.....	.....	427	.....	.....	.....
From Jan. 1st to Date.	368,256	359,870	24,517	24,055	875,021	1,176,873	621,419	598,591	5,577	5,607	27,615	30,707
Increase.....	8,386	.....	462	.....	.....	.....	22,828	.....	.....	.....	.....	.....
Decrease.....	.....	.....	.....	.....	301,852	.....	.....	.....	30	.....	3,092	.....
Ave. Weight of Hogs..	.....	.....	.....	.....	250	230	.....	.....	.....	.....	.....	.....

Disposition

C. & N. W. R., East...	4,838	4,975	.....	160	24,942	4,534	8,936	12,112	25	197	425	297
C. & N. W. Ry., West..	2,770	2,232	257	102	.....	139	1,681	3,221	42	78	103	96
C. B. & Q. Ry., East...	7,932	7,559	54	315	11,120	9,232	16,246	19,953	251	221	510	501
C. B. & Q. Ry., West...	1,473	1,799	.....	472	215	127	1,155	560	26	90	58	78
C. G. W. Ry.....	735	831	.....	50	6,644	1,861	4,602	1,760	.....	.....	112	36
C. M. & St. P. Ry....	7,994	8,106	50	164	7,179	10,391	16,827	13,741	158	66	477	492
C. R. I. & P. Ry., East.	3,875	3,320	50	109	4,334	1,949	6,427	2,845	134	1	230	167
C. R. I. & P. Ry., West.	294	578	.....	52	.....	.....	456	1,567	.....	.....	11	26
C. St. P. M. & O. Ry...	1,000	1,443	50	103	143	.....	1,666	1,306	.....	.....	47	62
Illinois Central Ry....	964	1,347	492	743	323	.....	260	417	.....	12	47	86
Mo. Pac. Ry.....	4,635	3,936	44	.....	50,704	30,155	232	.....	101	145	684	403
U. P. R. R.....	3,352	3,533	547	273	1,356	229	5,129	4,241	119	51	152	147
Wabash R. R.....	1,656	2,005	54	.....	16,409	12,907	1,451	776	102	616	211	212
Total Shipments.....	41,518	41,664	1,598	2,543	123,369	71,524	65,068	62,499	958	1,477	3,067	2,603
Driven Out.....	1,839	3,225	.....	108	1,095	496	4,988	9,416	.....	.....	.....	.....
Consumed in S. Omaha.	97,010	84,419	7,517	7,400	169,663	242,671	194,261	157,426	.....	.....	.....	.....
Grand Total.....	140,367	129,308	9,115	10,051	294,127	314,691	264,317	229,341	.....	.....	.....	.....
Consumed in S. Omaha from Jan. 1st to Date	252,150	233,032	17,869	18,542	532,135	912,390	453,995	419,858	.....	.....	.....	.....
Stockers and Feeders to Country.....	18,565	20,378	.....	.....	1,017	978	14,535	13,841	.....	.....	.....	.....

South Omaha, Nebraska, March 31, 1926. M. L. Shawcross, Secretary.

[fol. 826] Firm No. 60

South Omaha, Nebraska

Statement of Volume Year Ended December 31, 1925

Schedule 3.

Selling

	No. Cars		
	S. D.	D. D.	No. Head
Straight Cars:			
Cattle & Calves	203	...	5,393
Hogs	378	5	28,698
Sheep	1	...	119
	582	5	34,210
Mixed Cars:			
Cattle & Calves	67	...	779
Hogs			3,220
Sheep			185
	67	...	4,184
Drive-Ins and Truck-Ins:			
Cattle	...	...	118
Calves	...	...	13
Hogs	...	...	659
Sheep	...	...	6
	...	...	796
Speculator—Yard Sales:			
Cattle	...	...	1,100
Calves	...	...	48
Hogs	...	...	1,238
Total Selling	649	5	41,576

Buying

Straight Cars:			
Cattle and Calves	92	...	2,785
Hogs	3	...	206
	95	...	2,991
Drive-Outs and Truck-Outs:			
Cattle and Calves	...	...	56
Total Buying	95	...	3,047

(Here follows Exhibits 66 and 67, marked side folio pages 827, 828, and 829)

[fol. 830] EXHIBITS 68-83, INCLUSIVE

Accounts of purchase and sale as rendered by a live stock commission firm to the shipper of live stock, showing the disposition of the live stock, distribution of the proceeds for various typical consignments, single and plural ownerships, straight and mixed loads, etc. The form upon which the account is made is as follows:

Bliss-Wellman & Hopkins, Live Stock Commission, Rooms 251-256 Live Stock Exchange Bldg.

Telephone, Market 0910

F. C. Bliss, Mgr. Cattle Dept.; F. F. A. Wellman, Mgr. Hog Dept.; C. H. Hopkins, Manager Office

Stock Yards Station,
Omaha, Nebr., —— —, 192–.

Sold for Account of —— ——. Shipped by —— ——.
Postoffice: ——. Shipping Point: ——. R. F. D.: ——.

Purchaser	Cattle	Hogs	Sheep	Weight	Dockage		
					Sows	Stags	Lbs.
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

Price	Gross Item	Amount	Car Nos.	R. R.	Weight	Rate
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

National Fund to Increase .....
Meat Consumption .....
Yard Insurance .....
Freight .....
Terminal .....
Truckage .....
Total .....
Yardage .....
Hay, — Lbs. @ — .....
Corn, — Bu. @ — .....
Inspection .....
Arbitration .....

Commission .....

Total Expense .....
Net Proceeds .....
Cash Advanced .....

Balance .....

Anything not satisfactory, please write us for explanation. We will most cheerfully furnish all particulars. —— Bank.

[fol. 831] The exhibits show typical loads of live stock sold to numbers of purchasers varying from one to eight, with various combinations as to species of livestock, number of owners interested in the shipment, number of drafts issued, etc. Exhibit 71, for example, shows 69 head of hogs, sold to two purchasers in 7 different lots, with several different owners remitted to through a shipping association; the total proceeds being $2,059.05 distributed as follows: National fund to increase meat consumption, 5¢; yard insurance, 15¢; freight, $40.25; terminal charges, 50¢; yardage, $8.28. Corn, 10 bushels at $1.30, $13.00; inspection, 20¢; commission, $15.90; total proceeds, $78.33; net proceeds to shipper, $1980.72.

EXHIBIT 84

Rate schedule recommended by witness T. W. Tomlinson:

[fol. 832] GOVERNMENT EXHIBIT No. 84

Live Stock Commission Rates Recommended by T. W. Tomlinson in Docket 143 (pending Before Packers & Stock Yards Administration) for Application at Omaha Market.

Single Ownership, Carload Lots in 36′ 7″ Cars or Less in Length

Kind	Rate
Cattle	$14.00
Calves S. D.	14.00
Calves D. D.	18.00
Hogs S. D.	12.00
Hogs D. D.	16.00
Sheep S. D.	12.00
Sheep D. D.	16.00

For cars larger than 36′ 7″ to and including 40′ inside measurement, 8 per cent additional. For cars above 40′ to and including 44′ inside measurement, 15 per cent additional.

Buying commission not to exceed the above selling schedule.

Mixed Species in Single Ownership, Car Lots

Kind	Per head	Maximum per species
Cattle	60¢	$14.00
Calves S. D.	30¢	14.00
Calves D. D.	30¢	18.00
Hogs S. D.	25¢	12.00
Hogs D. D.	25¢	16.00
Sheep S. D.	20¢	12.00
Sheep D. D.	20¢	16.00

When a car contains only cattle and calves it shall not be considered a mixed car lot.

Live Stock Driven or Hauled in

Kind	Per head
Cattle	70¢
Calves	35¢
Hogs	30¢
Sheep	25¢

Not to exceed 25 head of cattle, 50 head of calves, 60 head of hogs, 100 head of sheep or lambs, driven or hauled in by one owner shall be considered as a carload lot and carload commission rate shall apply as maximum. Above 100 and not to exceed 200 head of sheep or lambs shall be considered as a double deck carload lot and charged accordingly.

Plural Ownership, Carload Lots

When plural ownership carload lots are handled in the same manner as single ownership cars—the single ownership schedule will apply.

When plural ownership carload lots are sorted, sold or weighed for ownership, marks or brands, the following rates shall apply:

Kind	Per head
Cattle	70¢
Calves	35¢
Hogs	30¢
Sheep	25¢

When prorating is done a charge of 25¢ for each owner shall be made, with a maximum charge of $2.00 on any car.

[fol. 833] EXHIBIT 85

Statement of Profit and Loss, Certain Feeding Operations of Kent-Burke Company, 1923, 1924, and 1925

1923

Ranch	No. head fed	Net loss	Net gain
Genoa	748 hd.	.....	$2,712.10
Kent	288 hd. / 170 ylgs.	.....	1,741.94
Merchiston	594 hd. / 231 ylgs.	.....	3,872.99
Plum Creek	442 hd.	.....	4,514.08
Lee Place	402 hd. / 213 ylgs.	$3,790.86	.....
Moore Place	684 hd.	3,367.54	.....
	3,772	$7,158.40	$128,841.11
No. of hogs shipper	4,888	.....	$5,682.71

1924

Ranch	No. head fed	Net loss	Net gain
Genoa	538 hd. / 328 ylgs.	$2,944.84	.....
Kent	297 hd. / 281 ylgs.	2,642.96	.....
Merchiston	444 hd. / 201 ylgs.	960.94	.....
Plum Creek	372	.....	$1,643.95
Lee Place	252 hd. / 272 hd.	.....	737.40
Moore Place	437 hd.	2,260.14	.....
	3,476	$8,808.88	$2,381.35
No. of hogs shipped	6,184	2,381.35	
		$6,427.53	

[fol. 834]

1925

Ranch	No. head fed	Net loss	Net gain
Genoa	126 hd. 172 ylgs.	$2,346.15	.....
Kent	112 hd. 138 ylgs.	1,875.75	.....
Merchiston	208 hd. 282 ylgs.	614.67	.....
Plum Creek	225 hd.	.....	$113.63
Lee Place	61 hd. 306 ylgs.	1,180.06	.....
Moore Place	216 hd. 169 ylgs.	.....	325.62
	2,015	$6,016.63	$439.25
No. of hogs shipped.....	4,888	439.25	
		$5,577.38	

Exhibit 86

Statement of Duties of Owners Who do not Draw Salaries at South Omaha, Nebraska, Year Ended December 31, 1925

Firm No.

5 A—Cattle Salesman.
B—Hog "

11 A—Hog Salesman and Office, 50% of time to each.
B—Cattle " " " " " " " "

16 A—Hog Salesman.
B—Cattle Salesman.

17 A—Cattle Salesman and Office, 50% of time to each.

18 A—Branch.

23 A—Branch.

31 A—Branch.

26 A—50% of time cattle salesman.
50% " " hog "

29 A—Hog Salesman 50% of time.
Office " 50% " "

32 A—Cattle Salesman.
B— " " & Office, 50% of time to each.

33 A—Cattle Salesman, Manager and Solicitor.
90% of time Cattle Salesman, 10% manager and solicitor.

[fol. 835]

Firm No.	
34	Branch.
36	A—Buys and Sells Sheep, 50% of time to each.
41	A—Cattle Salesman.
42	A—Cattle Salesman.
	B— " "
	C—Hog "
55	A—Sheep Salesman 90% of time.
	Office 10% of time.
3	A—Hog Salesman.

EXHIBIT 87

Tabulation of branded cattle received by firms Nos. 13 and 18 during the period August 1-November 30, 1925. Tabulation includes detailed figures for each firm and each month, the date of the account sale, the number of cars, number of head, number of owners, number of drafts, number of head sold to traders, order buyers and packers respectively. Results are summarized as follows:

Branded Cattle Received by Firms #13 and 18, So. Omaha, Nebraska, August 1 to November 30, 1925

Summary of Tabulations

	Firm No. 13	Firm No. 18	Total
No. Cars	525	879	1,404
No. Head	14,749	19,263	34,012
No. Owners	672	675	1,347
No. Drafts	2,854	2,871	5,725
No. Head Sold to Traders	5,509	8,302	13,811
No. Head Sold to Order Buyers	3,989	2,465	6,454
No. Head Sold to Packers	5,251	8,496	13,747

EXHIBIT 88

Study of costs and methods of fattening beef cattle in the corn belt, 1919-1923, published by the Department of

Agriculture. Contains discussion, statistical tables, and charts as to cost per 100 lbs. gain of cattle of various initial weights on various feeds and handled under various practices; studies of the effect of various rations, various modes of handling, etc.

[fol. 836] EXHIBIT 89

Economic study of the costs and methods of range cattle production on 41 ranches in Colorado, 1922, published by the United States Department of Agriculture. On page 3 of exhibit appears the following:

"Cost of Production

The costs of production differ widely with the locality and with the system of management, both in the same year and from year to year. There is a marked variation from ranch to ranch as the following cost figures show. As an illustration the five ranch herds shown below with no perceptible difference in range, feed, water facilities, quality of animals or animal losses show large differences in production cost because one ranch had a calf crop of 70 per cent while an adjoining ranch had a calf crop of only 36 per cent. Table I shows five ranches all adjoining each other with line fences practically touching.

Table I. Variation in Cost of Producing Calves on Five Adjoining Ranches in Colorado, 1922

Ranch number	Calf crop	Gross cost per calf
7	70%	32.50
2	67%	39.78
14	56%	52.02
40	51%	45.11
13	36%	66.12

These wide differences in costs are caused mostly by methods of management of the breeding herd."

On page 6 appears the following:

"In general, the size of the calf crop, the winter feed bill and the labor cost on each ranch are the factors having the most influence upon the cost of calf production. Upon the 17 prairie ranches studied the cost per calf varied from $19.46 to $82.69 per calf. Upon the 24 mountain ranches the cost of a weaned calf caried from $28.66 to $66.12 a head."

[fol. 837] EXHIBIT 90

Economic study of costs and methods of range cattle production in north central Texas, 15 ranches in 1920, 1921 and 1922, and 40 ranches in 1923, published by the United States Department of Agriculture.

EXHIBIT 91

"Farm Animals and Their Products"; booklet published by the United States Department of Agriculture, containing miscellaneous statistics as to production and distribution of live stock, dairy products, wool, poultry, etc., during the year 1923, with cumulative tables for that and prior years.

EXHIBIT 91 (a to r)

Copies of the monthly supplement to "Crops and Markets," published by the United States Department of Agriculture, January, 1925—February, 1926, containing statistical data as to live stock, meat production receipts and disposition of live stock at various public stock yards etc.

EXHIBIT 92

Costs and methods of carrying cattle on National Forest Ranges in Colorado, Wyoming, Montana, Utah, Idaho, Ore-

gon, Washington, California and South Dakota, in 1924, published by the United States Department of Agriculture, January, 1926.

EXHIBIT 93

Costs of marketing live stock in the corn belt 1921, published by the United States Department of Agriculture, February, 1923. Tabulated from data collected from 237 cooperative livestock shipping associations. Pages 2 and 3 contain the following:

"Terminal Costs of Marketing Hogs, 1921

For two hundred cooperative livestock shipping associations in the central corn belt, practically one-third of the total costs of marketing hogs in 1921 was incurred in the terminal markets. It is important therefore, that the shipper should have knowledge of costs in these terminal markets. The table below shows the three most important terminal costs for live stock marketed through commission agents in a number of the important markets.

Principal Terminal Costs of Marketing Hogs, 1921

Cents per 1,000 lbs. (Home Weight) (Straight Shipments)

Market	Commission			Yardage			Feed			Com., yard & feed combined		
	Avg.	Low	High	Avg.	Low	High	Avg.	Low	High	Avg.	Low	High
Chicago	98.7	85.1	112.5	44.8	36.2	56.2	34.1	21.3	44.4	117.6	153.8	205.4
St. Paul.....	82.6	75.4	102.4	42.1	36.3	53.0	50.2	33.0	70.0	174.9	160.1	208.8
St. Joe.....	88.6	77.6	119.3	48.7	41.8	56.6	42.1	34.6	70.2	179.4	156.5	240.3
Kans. City...	83.6	75.7	103.7	50.5	37.8	58.5	37.8	29.3	57.1	171.9	161.4	218.7
Omaha	86.8	69.7	113.3	44.0	37.4	45.7	28.9	19.5	35.0	159.7	132.8	181.0
Sioux Falls..	93.8	80.6	108.8	47.7	42.3	50.9	38.7	28.8	45.7	180.2	163.2	187.9
Buffalo	77.7	68.3	85.2	58.6	51.7	105.0	76.4	58.9	102.6	212.7	201.4	259.0
Pittsburgh ..	93.8	83.3	112.1	58.5	42.3	64.8	71.1	23.7	106.5	223.4	178.1	262.5

*Averages are of associations shipping to the given market, weighted on the volume of business. Low and High figures are low cost associations and high cost associations—not shipments. Exceptional items omitted.

Commission (on shipments of hogs, unmixed with other species of livestock) varied from 68 cents to $1.19 per 1,000 pounds. The high cost association had a cost more than twice that of the low cost association. Since commission is usually charged on a per car basis, some of the variations in costs as between different markets is due principally to a difference in the weight of the car load, rather than to actual variations in the rates at the various markets. This emphasizes, however, the importance of full car loads. Savings achieved in this manner may possibly offset the losses due to crowding. Proper loading also reduces unit freight costs."

[fol. 839] EXHIBIT 94

Cost of marketing cattle in the corn belt, 1921, published by the United States Department of Agriculture, March, 1923. Tabulated from data collected from 237 cooperative livestock shipping associations. Divides marketing cost into (1) terminal costs; (2) freight costs; (3) losses in transit such as crippling, killing or shrinkage in weight; (4) local expenses incurred in loading and shipping stock. Terminal costs averaged about $1.50 per 1,000 lbs. shipped; freight cost about $3.50 per 1,000 lbs. shipped; losses through crippling and killing about 50¢ on an animal selling for around $70, and shrinkage in weight 3½% of the weight loaded; local expense approximately 50¢ per 1,000 lbs. shipped. Terminal costs are tabulated as follows:

Principal Terminal Costs of Marketing Cattle, 1921

Cents per 1,000 lbs. (Home Weight) (Straight Shipments)

Market	Commission			Yardage			Feed			Com., ydge., feed, combined		
	Avg.	Low	High	Avg.	Low	High	Avg.	Low	High	Avg.	Low	High
Pittsburgh ..	104.4	88.8	119.4	31.0	22.8	35.5	75.8	51.8	102.1	211.1	165.5	256.8
Buffalo	86.0	78.3	109.2	34.0	26.2	89.0	44.2	24.1	63.7	170.4	144.2	192.1
E. St. Louis .	99.7	93.7	138.9	46.3	42.6	53.4	19.2	11.7	21.5	165.2	157.9	199.6
Cleveland ...	86.9	86.2	106.4	31.2	30.8	52.0	43.1	42.4	72.6	161.2	159.5	231.0
Sioux Falls..	92.5	82.1	110.1	41.0	37.4	56.8	26.7	16.6	48.1	160.1	142.2	214.9
Kansas City.	90.6	80.2	98.4	40.2	37.4	43.8	20.7	14.0	31.3	154.4	131.7	173.6
Chicago	98.1	74.0	118.7	36.8	29.0	45.6	18.5	8.4	36.1	153.2	121.4	197.0
Sioux City...	84.3	77.2	104.7	41.4	40.1	44.1	16.0	12.9	19.7	141.6	136.7	161.7
Milwaukee ..	63.0	53.9	64.4	23.5	21.2	25.3	25.3	16.2	28.8	111.7	92.8	113.0

*Averages are of associations shipping to the given market, weighted on the volume shipped. Low and High figures are low cost associations and high cost associations—not shipments. Exceptional items omitted.

[fol. 840] EXHIBIT 95

Cost of marketing sheep in the corn belt, 1921, published by the United States Department of Agriculture. Tabulated on same basis as Exhibits 93 and 94. Terminal costs averaged $2.60 per 1000 lbs; freight about $4.25 per 1000 lbs; local expenses estimated at $1.65 per 1000 lbs; between 1/10 and 2/10 of 1% were crippled in shipment and between 4/10 and 5/10 of 1% were killed, while shrinkage in weight amounted to an average of approximately 8% of the weight shipped. The average terminal costs were, commission, $1.60 per 1000 lbs; yardage, 85¢ per 1000 lbs; feed 6¢ per 1000 lbs; charge by commission agents for prorating expenses and receipts among owners, 10¢ per 1000 lbs. Commission charges varied from market to market from a low of 105.0¢ per 1000 lbs at St. Joseph, to a high of 295.0¢ per 1000 lbs. at Kansas City; while the average varied between 125.1¢ at Buffalo to 214.6¢ per 1000 lbs. at Kansas City; the terminal markets being considered Chicago, East St. Louis, Kansas City, Sioux City, Buffalo and St. Joseph. As to commission the exhibit also states:

"Commission: As shown by the table on page 5, Commission charges on sheep are largely levied on a head or car basis, rather than upon a weight basis, as we have shown the costs for the sake of comparison. The cost per unit of weight, therefore, in any given market will vary inversely with the average weight of the animals and the average weight shipped in the car. In a like manner the difference in Commission costs between markets will be partly explained by these factors. Obviously, differences in published rates will also help to explain the differences in cost between markets. (See page 5) For example, the graph on page 3 indicates that the commission costs in Kansas City and St. Joseph are considerably higher than for the other markets. Referring to the table on page 5, we note that in these two markets the average weights per car are lowest. Similarly the low commission costs in Buffalo and Sioux City are explained by the larger loads. The table on page 4, shows the wide range in commission costs within each single market. In Chicago, for example, the cost to the association shipping at the lowest average

cost was $1.18 per 1000 lbs. The high association cost was $2.08 per 1000 lbs. A similar variation is apparent for the other markets."

EXHIBIT 96

Cost of production of range sheep in the San Luis Valley, [fol. 841] Colorado, published by the United States Department of Agriculture and the Colorado Agricultural Experiment Station, January 7, 1926. Contains a discussion of methods of handling various breeds, with statistics as to production and operating costs.

EXHIBIT 97

Sales data for 6 weeks of 1925 of firms 7, 23, 40 and 58, with segregations to show numbers of single deck cars, numbers of double deck cars, mixed species in cars, drive-in consignments, yard sales, number of head, number of buyers, number of owners, weights, numbers of drafts, gross proceeds, expenses, etc.

EXHIBIT 98

Receipts by cars of the several respondents for the several years, 1921 to 1925, inclusive, segregated into cattle, hogs and sheep.

EXHIBIT 99

Transcript of oral evidence before Secretary, heretofore summarized.

EXHIBITS 100 AND 100a

Work sheets used in preparing Exhibits 7-65.

EXHIBIT 101

Volume reports used in preparation of statistics as to volume, constituting part of Exhibits 7-65.

EXHIBIT 102

Computation submitted to Secretary of Agriculture on oral argument before him, showing comparative receipts, first nine months of 1926 and corresponding months of 1925.

RESPONDENTS' EXHIBIT A

Arbitration award of 1923. Recommends a schedule of rates identical with Tariff No. 1, attached to the petition as an exhibit thereto and reproduced in the transcript thereof.

WOODS BROS. EXHIBIT 1

Order of suspension of Tariff No. 2 and notice of hearing. Identical with order served upon all respondents, attached to the petition as an exhibit thereto and reproduced in the transcript thereof.

[fol. 842] ADDITIONAL EVIDENCE

The Special Master thereupon received and the Court considered the following evidence in addition to that received by the Secretary of Agriculture upon the hearing before him:

Plaintiffs offered evidence as follows:

JOHN M. GILCHRIST, Omaha, Nebraska, testified:

I am a certified public accountant, head of the firm John M. Gilchrist Company, have been so engaged 27 years. At the request of the petitioners, I assigned members of my

force to make an audit of their business covering the period of 1925. Messrs. James H. Ross, Anderson, Hillmer and Condon handled the work. They consulted with me from time to time. I saw and approved their results. I signed Exhibit 103 at its completion. It is a statement reflecting the volume of business handled individually by 56 commission firms at Omaha during 1925 and shows the total cars of live stock handled, the sale and purchase value thereof and the commissions realized by applying the Secretary of Agriculture's order of November 19, 1926. Exhibit 104 is a statement reflecting the costs of handling live stock in 1925. Classified as salaries,—selling and buying, yard salaries, other salaries, advertising, travel and entertainment, exchange assessments and dues, other expenses, other deductions, additional rent, interest on investment. Exhibit 105 shows the result to each of the 56 firms when the adjusted costs of handling live stock for 1925 are deducted from the commissions realized under the Secretary's order of November 19, 1926.

James H. Ross, Omaha, Nebraska: Certified public accountant, with John M. Gilchrist Company, and in charge of the audits of petitioners' business for the period 1925. In taking the accounting we first had Exhibits 7-65 inclusive, the so-called blue audits prepared by or under the supervision of Mr. Shortell, the auditor representing the Government in these proceedings. We also had a copy of the Secretary's order of November 19, 1926, from which we ascertained the rates to be charged and certain other data. Exhibit 103, reflecting the volume of business handled individually by 56 commission firms at Omaha, was so prepared. Exhibit 103 shows the volume measured by total cars [fol. 843] handled and the receipts of sale and purchase, and the commissions under the Secretary's order; also the commission under the Secretary's order excluding the increase in dealers and speculators. By that I mean that the Secretary's order authorized an increase in the commission charged dealers and speculators and Exhibit 103 shows the application of the Secretary's order including those figures and also excluding it and including the com-

missions actually received from that class of business in 1925. The amount of live stock handled is shown in carloads, ascertained by adding to the straight cars and mixed cars of live stock received a conversion of drive-ins, truck-ins and sales to dealers and speculators on a basis of 27 head of cattle, 70 head of hogs, 225 head of sheep and 40 head of calves to a car. This was done to get the business down to a carload unit. It does not, however, affect the revenue that would have been produced. In ascertaining how much revenue would be derived from the business, we used the actual account of sales. The carload equivalents were taken from the Secretary's order, page 16, except that for calves which was obtained by consulting commission men.

The next column in Exhibit 103 shows the sale and purchase value of cars handled, which was furnished us by the Secretary of the Omaha Live Stock Exchange. And the 3rd column shows commissions under the Secretary's order. The 56 firms were requested to abstract their sales on a form showing straight cars, mixed cars, drive-ins and truck-ins and sales to dealers and speculators; also to separate their purchases. The form called for the number of head, the number of cars in case of carload shipments, the number of drafts, and the amount of the purchase or sale. We then took the Secretary's buying and selling schedule; there were certain parts of it which were not clear and we consulted with Messrs. Stryker and Tagg and their associates for a practical application of it and after they had told us what they thought the Secretary of Agriculture might mean, the tariff was so applied to each individual account of sales. If the audit turned in by the commission firms did not agree with the blue audit reports made by the Government's accountants, that is, if on adding up the commissions actually received in 1925 as shown in the data furnished us, the same showed a serious discrepancy as compared with the total commissions detailed in the blue audits, then we went to the individual firm and checked the account of sales back in detail. In most cases they agreed with the commissions shown in the Government audits. In addition, we could check errors in the head units, that is, the quantity of live stock handled, by looking across at the commissions received and if it seemed to be wrong, it would be neces-

sary to refer back to the firms' account of sales. Every effort was made to check up with the Government's audits. [fol. 844] By these methods we ascertained accurately what the business of these firms in 1925 would have produced in gross revenue if the Secretary's order had been in effect all of that year. That is shown in the third column, subject to the interpretation aforesaid. The tariff was not clear in a good many cases. For instance, in regard to straight cars, it says $15.00 per car. We were not clear whether that was the maximum or the minimum. For instance, suppose a man shipped in one head of livestock in a car, could he be charged $15.00, or if he shipped in 25 or 30 head, is that the maximum? The tariff does not state. We also treated cattle and calves as mixed cars. I talked one day with Mr. Shortell about the question whether cattle and calves constituted a straight car or a mixed car and I believe I was told the latter by him. Again, the tariff provided three drafts should be allowed to a car, and the former one said three drafts allowed to a deck. We worked on the basis of three drafts to the car as prescribed in the tariff. Again, "Is there a minimum or maximum commission on mixed cars?" We used the particular head rate of each species so long as it did not exceed the carload rate in each species. Suppose you had cattle and calves in a car and the car rate is $15.00 for cattle and $15.00 for calves; we would take the head rate until it reached $15.00 on the cattle and then the head rate until it reached $15.00 on the calves. That is quite an irregular problem because there would not ordinarily be a number of head sufficient to reach the maximum on each species, but that is the principle. Again, "Is there a maximum charge on the number of statements?" We took the position that as many statements as were made out could be charged for. Again, "Is there no maximum charge for sale of any class of livestock except sheep?" The old tariff had a maximum on cattle and hogs. The Secretary's order prescribes such a maximum for sheep but not for the other species where drive-ins and truck-ins are concerned. Again, "What is the application of the Secretary's order where stock is shipped in in a plurally owned car and sold by different firms at owner's request?" We held that the carload rate governs. That is, if a car were shipped in and a number of head were taken out and

turned over to another firm to sell, we applied the carload rate as a maximum, but the party who got the few head out of the car would be on the drive-in and truck-in rate and subtract that from the carload rate so that the total for the entire car would not exceed the carload rate.

Whenever we encountered such ambiguity, we would consult practical commission men who would tell us what they thought the Secretary meant and also furnish us their practical knowledge. Whether these variations would make any [fol. 845] difference in the revenue received, would depend on the loading. For instance, with reference to whether cattle and calves constitute a straight or a mixed carload, if the former, there would be no variation in the revenue, but if the latter, if there were, for comparison, 15 cattle and 8 calves in the car, the commission would be 60¢ a head for the cattle, or $9.00, and 30¢ for the calves, or $2.40, or $11.40, whereas, on the straight carload rate the commission would be $15.00; but if the car were loaded heavy and had 25 cattle and 3 calves, the commission would be $15.00 for the 25 cattle and 90¢ for the 3 calves, or $15.90. Whether our construction would increase or decrease the revenue, in other words, would depend on the loading.

Exhibit 104 is a statement of the costs of handling livestock in 1925. Exhibits 7-65 contained statements of assets and liabilities as of December 31, 1925, profit and loss statements for that year, and statements of salaries received by both owner and employee salesmen segregated as to their duties,—hog salesmen, cattle salesmen, etc., also statement of net worth. The profit and loss statements incorporate certain expenses which we have condensed as follows: salaries, selling and buying; yard salaries; other salaries; advertising; travel and entertainment; exchange dues and assessments; other expenses; other deductions; additional rent, and interest on investment. The amounts set up as salaries for owners sometimes are salaries and sometimes drawing accounts. Exhibits 7-65 include owners' salaries in profit and loss statements only if they were set up on the books.

Eleven firms out of the 56 did not set them up; hence, the operations for the year of these firms were not charged with these expenses. The Secretary's order recited that

$5,000 as to cattle and sheep and $4,000 as to hogs is considered a fair yearly salary of a salesman in these respective lines, and we have eliminated all owners' salaries as detailed in Exhibits 7-65 and have applied salaries for resident owners on the basis of $5,000 per annum for a cattle or sheep salesman or buyer, and $4,000 per annum for a hog salesman or buyer. In preparing Exhibit 104, employees' salaries were left as shown by the books, the same being a matter of contract.

We eliminated all clearance commissions, paid by nonmembers for the privilege of clearing through members; also life insurance premiums, exchange fines and chauffeurs' salaries. In addition to the costs detailed in Exhibits 7-65, we have added additional rent of $52,628.40 (as contrasted [fol. 846] with $54,000 allowed on page 18 of the Secretary's report and order), which figure we arrived at by allocating the increased rent per firm on the same ratio that the rent which was paid in 1925 bears to the total rent paid by the 56 firms also $50,405.52, interest on investment at 7% of net worth on December 31, 1925, after deducting for the difference in salaries and expenses.

Under selling and buying salaries we have included and applied salaries for the owners as above stated and actual salaries for employees. Other columns are indicated by their totals; the heading "Other Expenses," including insurance depreciation, the original rent paid, etc. With these explanations and corrections, Exhibit 104 accurately shows the expenses of each firm named for conducting its business during 1925.

Exhibit 105 reflects the result to each of the 56 firms when the adjusted costs of handling live stock are deducted from the commissions under the Secretary's order; that is, it is the result of subtracting the ascertained expenses in Exhibit 104 from the ascertained income shown in Exhibit 103. It further shows the result to each firm, excluding the portion of the tariff applicable to dealers and speculators and including the commissions actually received under the tariff in effect in 1925. (Counsel's explanation that the Secretary's tariff authorizes an increase in the rate heretofore charged traders and speculators, but that petitioners expect to show that it is not possible to obtain such extra income.)

The black figures in Exhibit 105 show the companies which would have received revenue in excess of the costs of handling under the Secretary's order applied to 1925. The red figures show the companies whose costs would be in excess of the revenue received under such order. The same is true in the 6th column; so that in Exhibit 105 all of the figures except those appearing in black, indicate the amount of the loss which the respective firms would have sustained in 1925 if the Secretary's order were applied to the transactions, and the costs were as indicated. On the 2nd sheet of Exhibit 105, the total loss, $168,110.50 is the net sum of the loss of the different firms who would have losses under that application, and $114,821.90, the total gains of the firms showing gains. The net loss is shown at the bottom of the column. With the commission on seconds eliminated, the total loss would be $196,077.41.

In Schedule 2, Exhibit 104, depreciation is included under "Other Expenses." We took the same amount as is [fol. 847] detailed in the Government's audit, which, in turn, was the amount set up on the commission books themselves. Where a firm in its accounting set up depreciation it was reflected in Exhibits 7-65 and in Exhibit 104; where no depreciation was set up on the books of a firm, the item was not so reflected. I prepared a separate schedule showing additional depreciation, Exhibit 106, the first 8 columns of which show the details of the depreciation shown on the books and in the Government's audits and the next four columns of which show the depreciation not set up on the books or allowed in the Government's audits. The basis used was 10% for furniture and fixtures; 10% for horses and 25% for automobiles. The result is depreciation $6,194.92 in addition to the $5,661.84 taken in Exhibits 7-65, separated for each individual firm. In the case of a firm showing a loss in Exhibit 105, the amount of this depreciation would be added to the loss. Thirty-three firms out of fifty-six did not take depreciation, which is always a constant and fixed expense. The rates of depreciation used by us are fair.

We also prepared a separate schedule, Exhibit 107, showing additional live stock exchange memberships, not set up on the books of some of the firms, and not reflected or allowed for in the Government's audits, Exhibits 7-65, nor

included in Exhibits 103, 104 and 105. Exhibit 107 shows the details of all memberships, including those set up and those not set up, the parties to whom they were issued, and their value on the basis of $4,000 per membership which was a fair value for 1925. Exhibit 107 shows an additional item of invested capital on this account of $312,000; that is, there was that much actual invested capital not reflected in the Government's audits. That additional capital, however, was not reflected in the costs shown in Exhibits 103, 104 and 105, though both it and interest on this additional capital could and should be added to the costs of the respective firms.

Exhibit 108 shows the ratio of commissions and net results to gross receipts, for 1925, showing the value of all live stock sold and bought, the actual commissions received in 1925 by each firm, the adjusted expense shown in Exhibit 104, the net receipts, the ratio of gross commissions to value of live stock handled, and the ratio of net receipts to such value. The average ratio of gross commissions to value of live stock handled in 1925 was .9; the ratio of net returns to value, of the firms which had income in excess of their expenses was ½ of 1/10 of 1%, which last percentage was computed without reference to the firms which [fol. 848] had losses. I made a similar computation (Exhibit 109) on the same volume of business, applying the Secretary's schedule of charges. This shows a ratio of gross commissions to value of live stock handled of 8/10 of 1%. Exhibit 110 shows the ratio of net results of total value of live stock handled, for the year 1925, applying the Secretary's order on the basis, both of a full commission to traders and speculators and of the present commission for that type of business. It shows an average ratio, for the firms showing gains, of 9/100 of 1% and 7/100 of 1% respectively, on the two bases.

Exhibit 111 shows the total cost per car of handling live stock. It shows the number of cars handled by each firm on the conversion basis above referred to; the adjusted cost of handling as reflected by Exhibit 104; the cost per car; the total commission, under the Secretary's order, on both bases heretofore referred to; the average commission per

car; and the net results after subtracting the costs per car from the commission per car received. The general average of the cost per car is $15.94. The general average commission per car on the first basis is $15.52, and on the second basis (with the increase on seconds eliminated) $15.03. The averages shown in the last two columns of Exhibit 111 take into account the instances where there was a profit. Taking the 56 firms as an average, they lost 42¢ per car on the first basis and 91¢ per car on the second.

Exhibits 103-111 inclusive offered in evidence. Received over the objection of defendants, as to exhibits 103, 104, 105, 106, 107, 110 and 111, that the same are irrelevant, the actual costs of the plaintiffs not being the measure of a reasonable rate and the said exhibits not tending to show any error in the Secretary's computation of reasonable costs, or that the rate fixed would not allow a reasonable profit over reasonable costs, that said exhibits are incompetent, in that they are based in part on evidence not submitted to the Secretary, which by the exercise of reasonable caution, might have been submitted at the hearing called by him; that the exhibits referred to items, such as equipment, not shown on the books, depreciation not shown in the audits, exchange memberships and other assets not shown upon the books, which were not included in the Government audits, Exhibits 7-65, copies of which were served upon all the petitioners at the time of the hearing before the Secretary, and the information concerning which petitioners had a full opportunity to furnish at said hearing; [fol. 849] also as to Exhibit 108, that the proportion which a rate bears to the value of a commodity handled is irrelevant to the question of the reasonableness of the rate.

Cross-examination:

In compiling my audit I obtained an abstract of sales from the commission firms and based my audit on it, except where discrepancies were shown in the Government's figures, in which case I went to the account sales and general books. I found no substantial variance between my audit and that made by the Government as to commissions received. There were substantial changes in the head of live stock but nothing of any note in the commissions re-

ceived. Most of these errors we were able to reconcile by conference with Mr. Shortell. Some items which Mr. Shortell treated as other income, we have treated as a reduction of expenses. Except, however, in the matter of additional depreciation, value of equipment, etc., being the changes shown in Exhibits 103, 104 and 105, we have accepted the Government's expenses. There were no extensive or substantial differences between the two audits.

I cannot remember any specific instance of cars being received with one or two or three cows or any ridiculously small number. There were cars with less than the normal load. Where discrepancies were shown on the Government's figures, we checked them against the general ledger, checked their books of account with the account sales. If there was any difference, we went to the general ledger.

In setting up the schedule of expenses used to show the result of applying the Secretary's order, we eliminated all owners' salaries as set up on the books and applied the $5,000, $5,000 and $4,000 schedule to cattle, sheep and hog salesmen, eliminating all non-resident owners, irrespective of the amount of stock they sold. In fixing these figures we had no record whatever of the number of cars of the respective classes of stock which they had sold.

In referring to firm No. 2, referred to in the Secretary's audit, as having two owners' salaries and no employe salesmen, we assigned a salary of $5,000 to each of these owner salesmen. Assuming that the two owner salesmen sold 645 cars of cattle, or an average of 322 cars for the year, our practice was to assign these two owners a salary of $5,000 apiece on our schedule. We took the designation of the classes of stock they handled from the Government's audit reports. We assigned the $5,000, $5,000 and $4,000 salaries to owners, irrespective of the number of cars they sold.

[fol. 850] The clearance commissions which we eliminated are merely a bookkeeping service which is performed by a number of firms to clear the sales of non-resident buyers and sellers on the market. I consulted certain commission firms handling that type of business who agreed that the expenses would be about 25% of the commissions and eliminated expense on that basis. We fixed the volume simply on the authority of the firms themselves. We eliminated

the clearance commissions and also the 25% expense. We did not use any other evidence from the books of the firms in arriving at the percentage of these commissions which we deducted as expenses but relied merely on their opinion. The same clerk might be handling part of the commission business along with the clearance commission. Of course, the same clerks in many cases report the sales and the business pertaining to the different classes of live stock; we don't have a separate class of clerks to work on the sales of the respective species. Our expense classification "other expenses" takes care of the clerical end of the business for the whole business. I attempted to form no opinion or conclusion as to the proper amount of costs to be allocated to the selling of one class of live stock as against another. The clearance commission business is infinitesimal with the exception of Jackson Live Stock Company, where it amounts to around $7,000.

Additional depreciation, above that shown on the books when the Secretary's order was made, is not incorporated in any of our costs. The Government audits do not include depreciation except when shown on the books. Thirty-five or thirty-seven of the fifty-six firms have failed to incorporate such depreciation in their expenses. It is not shown on the books, but the petitioner should have taken it. We did not add it to our statement of costs but simply show it in a separate statement as an item which could have been included. We did not show that additional depreciation in arriving at our conclusions as to the results of the application of the Secretary's tariff to the 1925 business, but we did make up a separate schedule showing it as an additional item that could have been considered. Likewise, the 7% on the $312,000 additional investment in memberships is not a part of our computation of costs. Hence, there is no difference between the Government's audits and ours as far as the actual cost schedule is concerned.

In saying that depreciation is a fixed expense, I do not mean that everyone is compelled to set it up, but I do mean that it always exists. Plaintiffs are not under obligation to set it up, but if they wish to set up equitable costs, it is a [fol. 851] factor.

A check of Exhibits 108 and 109 shows, as to the proportion between the reduction in the commissions allowed

plaintiffs as the result of the Secretary's order, to the total value of gross receipts, that the actual commissions received in 1925 were $2,168,789.56, whereas, those received under the Secretary's order on the first basis would be $1,983,433.42. Exhibit 108 shows the relation of commissions to total value under the Secretary's schedule as 92/100 of 1%. The third column of Exhibit 109 shows the ratio of commissions under the Secretary's order to total value of 83/100 of 1%, or a reduction of 9/100 of 1% of gross receipts on the first basis used by us. The two bases are as per the Secretary's order and as per his order less the increase on seconds.

The discrepancy between the 56 firms shown in our audit and the 59 covered by Exhibits 7-65 is due to the fact that the American Live Stock Commission Company's books had been sent to Chicago and were not available; and McCullough Commission Company was out of business and we could not find their records; the Central Live Stock Commission Company was merged in and included with the Interstate.

Redirect examination:

The numbers used to designate firms in the Government audits were placed opposite the names of the firms to which they referred in our various schedules. The numbers missing are the ones that dropped out.

Exhibits 7-65 did not contain any data showing the amount of revenue that the Secretary's order would produce. We did not get our figures showing what that revenue would be from the blue audits. We had to get that out of the account sales. If the total amount of live stock handled, as furnished us by the different firms, corresponded with the receipts as shown in the blue audits, we assumed its correctness, if the total head looked right. If the head looked off, we went to the account sales. For example, if we had 70 head trucked or driven in and a small amount of commission, we would know immediately there was something wrong with the head. But if in all respects the report of the number of live stock checked with the figures in the blue audits, we were satisfied. We had to go back to the account sales and the books in about 90% of the cases

because of the discrepancies either in the quantity or in the money.

[fol. 852] Recross-examination:

I mean that in 90% of the cases we found the first information given us by the commission man was in some respects defective. There were several firms we took off direct where we did not have the help available, besides those we checked back.

Emery H. Anderson, Omaha: I am connected with John M. Gilchrist Company and assisted in making all of the exhibits, Exhibits 103-111 inclusive, except 104, 105 and 107. The data shown in these exhibits is correct.

Redirect examination:

Exhibit 122 is a schedule showing the income or profits of any kind received by each one of the commission men who are plaintiffs herein. Selling costs are treated on the same basis as in Exhibit 104, except that instead of using the $5,000, $5,000 and $4,000 basis, we have used actual salaries taken by the owners, putting salary or drawing account in as part of the cost of the business in order to ascertain profits and adding same to the individual's income in reaching final results. Exhibit 122, therefore, shows exactly what each member, owner or stockholder got out of the business, in either salary, drawing account or profits.

Interest on investment was not set up as an expense and therefore increased the income of the owner; hence the figures in the third column of figures show what each owner got as salary, drawing account, profits and interest on investments. Drawing accounts were not treated separately and if an owner drew within the earnings, we merely treated it as the way of getting his earnings. The red figures near the bottom of the third page in exhibit 122 indicate that the man there named sustained a loss, getting nothing by way of either salary, profits or interest on investments. Results are summarized on page 4 of Exhibit 122, showing two owners who received over $20,000; 1 receiving from $19,000 to $20,000; 3 receiving from $16,000

to $17,000; 1 between $15,000 to $16,000; 2 between $14,000 and $15,000; 4 between $12,000 and $13,000; 4 between $11,000 and $12,000; 2 between $10,000 and $11,000; 2 between $9,000 and $10,000; 3 between $8,000 and $9,000; 4 between $7,000 and $8,000; 13 between $6,000 and $7,000; 16 between $5,000 and $6,000; 19 between $4,000 and $5,000; 15 between $3,000 and $4,000; 8 between $2,000 and $3,000; 9 between $1,000 and $2,000; 9 less than $1,000; and 10 who suffered a loss.

Of 127 owners, there were 28 drawing amounts between $7,000 and $20,000, with an average income of $12,493.26. [fol. 853] There were 63 drawing between $4,000 and $7,000, with an average income of $4,832.63. There were 26 ranging from $3,000 down, with an average income of $1,508.37. There were 10 who suffered an average loss of $1,125.12. Schedule 122 was made up from the business in 1925 and is based on Tariff No. 1, actually used as shown by the books of the firms during that year. Exhibit 122 received without objection.

Exhibit 123 is a similar computation on the business of 1925, applying the Secretary's schedule with the increase in the rate to dealers and speculators authorized by the Secretary and treating expense items the same as in Exhibit 122. That is, I showed actual salaries which owners allowed themselves and carried the same into the amounts which they would have received from the business together with the profit, if any, from the whole business, and making no deduction for interest on investment. The red figures on the third page opposite the names of the owners represent each such owner's loss. The 4th page summarizes results and shows that there were two owners who received between $15,000 and $16,000; one owner who received between $14,000 and $15,000; two owners who received between $13,000 and $14,000; two owners who received between $12,000 and $13,000; three owners who received between $11,000 and $12,000; two owners who received between $10,000 and $11,000; one who received between $9,000 and $10,000; five who received between $8,000 and $9,000; six between $7,000 and $8,000; nine between $6,000 and $7,000; eleven between $5,000 and $6,000; twelve between $4,000 and $5,000; twenty between $3,000 and $4,000; thirteen between $2,000 and $3,000; fifteen between $1,000

and $2,000; and ten less than a thousand dollars. Thirteen suffered a loss.

One Hundred Three of One Hundred Twenty-seven either suffered a loss or would receive less than $5,000 for their services, profit and interest on investment. Twenty-four owners receiving from $7,000 up, had an average income of $10,408.50; fifty-two between $3,000 and $7,000 had an average income of $4,644.45; thirty-eight receiving less than $3,000, had an average income of $1,573.57; thirteen had an average loss of $1,619.81. Exhibit 123 received with our objection.

Exhibit 123-a shows results on the same basis as Exhibit 123, deducting from the net profits of each owner the amount of interest on investment and the difference between the Secretary's order and the rates actually charged, at the present time, dealers and speculators. Ob- [fol. 854] jection by the Government to Exhibits 123 and 123-a for the reason that they are based on actual expense and make no attempt to ascertain reasonable costs overruled; exception.

ALOYSIUS CONDON, Omaha: Employee of John M. Gilchrist Company; participated in making the audits testified to by witness Ross, especially exhibits 110, 111 and 103. The results there shown reflect the condition of the books.

C. L. HILMER, Omaha: Certified public accountant with John M. Gilchrist Company; took part in preparing Exhibits 103-111, and especially 104, 105 and 106, the work in which is accurate.

Petitioners offered in evidence Exhibits 112, 113, 114, 115 and 116, being respectively copies of the schedule of live stock commission rates and charges in effect January, 1926 and still in effect in January, 1926 and still in effect at Chicago, Sioux City, Denver, St. Joseph and Kansas City. Received over defendants' objections that rates at points other than Omaha are irrelevant to question of the reasonableness of the rates at Omaha and that, since it is physically impossible to fix the rates on all markets at one

time, the fact that the Secretary in exercising the power of rate fixation delegated to him, started at one place has no relationship to the reasonableness of the rates fixed at that place.

Petitioners also offered in evidence Exhibit 117, being a letter and attached exhibit addressed to the Attorney General of the United States January 10, 1927 by the Secretary of Agriculture, containing an estimate of the reduction in commissions of the petitioners based on the 1925 volume of business, by a comparison of the commissions received under Tariff No. 2, and the tariff contained in the Secretary's order of November 19, 1926, showing a total reduction of $341,093.00. Received over defendants' objection that the figures in the said exhibit pertain only to incoming shipments and that the amount of the reduction is immaterial, the question being whether the rate fixed is sufficient.

A. F. STRYKER: Engaged in the live stock commission business since 1890; Secretary and Traffic Manager of the Omaha Live Stock Exchange since 1906. The services rendered directly by the commission merchant to his customers are, as stated in my testimony before the Secretary, similar to that rendered by a doctor or lawyer to his pa- [fol. 855] tient or client. Shippers consult with their commission man as to the breed and number of live stock to be handled on a given piece of ground; the price to be paid; the age of live stock; the length of time the live stock should be fed; the kind of feed to be used; whether, and when, live stock shall go onto pasture or into the dry lot. The commission man keeps his customers constantly advised of market conditions, through a daily market paper for which the commission merchant pays, through the monthly, semi-monthly and weekly market papers; by telephone and telegraph as to violent fluctuations. The shipper is guided by his commission firm as to the date he shall be on the market. When live stock is finally received at the market the commission man exercises his utmost endeavor to obtain for his customer the last possible cent, using his best judgment, and trying out one buyer or all of the buyers on the market, having as his sole object, net

returns for his patron. Deep and broad personal friendships exist between market patrons and their commission merchants. These friendships extend to the families of both, and take in even such personal matters as helping the shipper's wife to shop, or going with the shipper to execute commissions for his family. Shippers have told me that their best friends are the commission men; and the personal relationship between them should not be measured in dollars and is close, confidential, intimate and valued by both parties. The commission man not only sells for his patrons, he also buys live stock to be sent to their feed lots, exercising his best judgment in its selection, with or without the customer's presence, buying the stock at the lowest possible price, acting solely in his patron's interest, the spirit surrounding the business being one of service and honor. I am impressed with the fact that our commission men seem to do more for their patrons, and represent them more fully than in the case of any relationship other than the professional ones above referred to.

After live stock leaves the yards, in the case of carload shipments, it is set at the unloading chutes of the yard company. Much of the live stock is yarded by the commission firm's employees from the unloading chutes to the pens in the respective divisions of the yards, especially in handling cattle and hogs. After the stock are yarded, hay or other feed is ordered from the yard company. The cattle are sorted. From a carload of 25 cattle there may be sorted 6 or 8 different classes—fat steers, prime fat steers, medium fat steers, feeders steers, prime fat cows, medium [fol. 856] fat cows, cutter or canner cows, cows of the cheaper grade, bulls, springer cows and colves. Each one of these different classes must be sold to the highest possible bidder. The average house has salesmen for steers and cows. Some of them have feeder salesmen; others salesmen for the odds and ends, bulls, calves, cripples, etc. One car may require the selling ability or sales service of three or four persons.

After sale and the stock has been fed and watered, it is taken to the scales of the yard company and there weighed to the purchaser. The commission firm remains responsible until the stock is placed on the scales for weighing

when possession passes to the yard company and title to the purchaser.

In the office tickets are made by the yard company for each draft weighed. These tickets show the pen from which weighed, the number of species, weight, name of commission firm and party to whom weighed. The salesman of each different lot marks on the ticket the price at which sold. The commission firm's office force assembles these tickets so that all covering a given shipment are together and enters them upon an account sales, showing the name of the shipper, town from which shipped, railroad which transported them, mail address of the shipper, if different from the shipping point, car number in which transported, number of head in the different classes as assorted, sold and weighed, weight of each different lot, price and extension of gross selling price; also freight, feed, yardage and other charges. Gross proceeds less these charges are sent to the shipper, sent to his bank, applied on mortgages, or otherwise disposed of according to circumstances.

Meanwhile, office employees have billed the purchasers for the purchase price, which is deposited in the bank, or in some cases the shipper may have received a draft for his proceeds and have left the yards before the purchase price is received. Every member firm at Omaha is bonded to the Secretary of the Exchange as Trustee, from a minimum of $5,000 up to almost $50,000. In 30 years, no shipper at Omaha has ever lost a dollar because of default. It is only fair to suggest that that record stands out as contrasted with almost any other line of business.

No commission man, within my knowledge, has ever accumulated weath directly from the commission business. [fol. 857] It just is not done.

The reverse of the above steps are taken where commission firms buy live stock for shipment to the country, except that they do their best to buy at the lowest possible price, billing the purchaser after stock has been purchased, the commission firm remaining responsible until the stock is ordered out and turned over to the yard company for loading.

The petitioner firms function through the Omaha Live Stock Exchange, a purely voluntary association composed

of most of the commission men and traders on the market. Its objects are stated in Rule 3 as follows:

"The objects of this Association are: To maintain a commercial exchange; not for pecuniary gain or profit, but to promote uniformity in the customs and usages of members; to inculcate principles of justice and equity in trade; to enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; and generally to secure to its members and patrons the benefits of co-operation in the furtherance of their legitimate pursuits."

The Omaha market opened August, 1884. There were few commission men until 1889, when the Exchange was organized to safeguard the interests of the patrons of the market and those operating thereon. It operated as a Nebraska corporation until about 1915 when it became a voluntary association. Its first regular meeting was held January 21st, 1889. The first motion ever made was for the appointment of a committee to obtain better railroad service, and better service in the weighing of stock in transit. The next motion was to appoint a committee to see the Governor of Nebraska relative to inspection of cattle and necessary action to prevent abuse of live stock in the yards. During the same month, the Board of Directors appointed a joint executive committee for hog inspection. By this we mean determination of the number of pregnant sows and stags in each load or fractional rate offered for weighing. This dockage is taken from the [fol. 858] weight of animals docked. Disagreements as to shrink- of this kind were primarily responsible for the organization of the Chicago Exchange earlier in the 80's. It used to be said that if a packer bought a drove of hogs high, he docked them cheap; that is, unless he were allowed to dock them as he saw fit, he refused to accept them.

In February, 1889, the Exchange took up the matter of working with the yard company to obtain the feeding of better hay to stock in the yards; also the reduction of telegraph tolls; and at the same time reduced prices of meat

and live stock were discussed and a committee appointed to bring about an adjustment to protect the purchaser. Laws were being introduced to compel local inspection in the packing houses, and the Exchange, in the interest of the shipper, asked for Government inspection. It also made an effort to compel rendering companies to pay higher prices for dead live stock. On June 3, 1889, a committee on railroad service was appointed, the beginning of the present traffic department. During this year there was an outbreak of Texas fever and the then Governor was asked to quarantine Nebraska against the Kansas City market, safeguarding the interests of patrons at Omaha. During this year the first fine for uncommercial conduct was assessed against a local firm. The Board of Directors has always made the definition of such conduct broad enough to cover conduct unbecoming a gentleman, or unethical conduct of any kind, as well as dishonest practices. During the existence of the Exchange only 5 members have been expelled for dishonesty. One of them appealed to the Supreme Court of Nebraska, where the Exchange was sustained.

In November of 1889, steps were taken for the organization of a National Live Stock Exchange which the Omaha Exchange joined in December. Early in 1890 the Exchange continued its policy of insisting on better service by the yard company and the carriers tributary to the market. During that year it began handling discrepancies in freight rates. Local Nebraska rates were submitted to what was then the Nebraska State Board of Transportation, later merged into the Nebraska State Railway Commission. In this year also there was a contest with the carriers for an equalization of rates on live stock products to the south, southeast and southwest. Lower adjustments were arrived at on live stock to Omaha from points in the North Platte territory on a parity with points south of the Platte River to Omaha and other markets. As early as [fol. 859] 1890, requests that commissions be placed on a percentage basis were made.

In 1890 the first attacks in Congress on oleo were made. We helped the packers combat them for the reason that oleo is made from cattle fats and a discrimination against it hurt the value of cattle and reduced the remuneration of

our shippers. About this time also a collection was taken up among our people for needy Western Nebraskans. In December, 1891, occurred the first discussion of rents charged by the yard company in the then new Exchange Building, the one recently abandoned. During this year also, commission men made an effort to reduce expenses by passing the first solicitor rule, restricting the amount of solicitation which might be done in the country.

Since the organization of the Exchange, the minutes and the reports of its committees show a continuation of its original policy of protecting the interests of its patrons. In time, competition between markets grew up. The first case tried by our Exchange before the Interstate Commerce Commission was to bring about equalization of freight rates to the east between Omaha and the lower river markets, Kansas City and St. Joseph. This case was tried in Omaha and resulted in lowering freight rates from a minimum one-half cent to a maximum of seven cents per one hundred pounds from Omaha to the Mississippi River and points east thereof. This increased the buying power at Omaha and was taken advantage of by independent slaughterers in the east, with resultant benefits to our patrons. At seven cents per hundred pounds the difference would be $15.40 on a minimum car of cattle. This took place about 1910 or 1911. Shortly thereafter the petitioners herein, through the Exchange, filed a complaint before the Interstate Commerce Commission resulting in an order in our favor, saving the patrons of public markets in this country over a million dollars. I refer to the Stock Cattle Rate case, known as I & S 55. This case had to do with so-called Stock Cattle Rates. Hearings were held at Omaha, St. Paul, Kansas City and Chicago. Its magnitude is indicated by the fact that in the fall 65% of the receipts at Omaha and the other river markets, go back to the country for further finishing and that on this 65% there was a 25% saving in freight rates. Since then this stock rate has been broadened to cover stock sheep and hogs. There is no question but that this saving alone has, every year since it became effective, amounted to more than all of the com-[fol. 860] missions and a goodly portion of other yard charges on the public markets, especially at Omaha. Had not this complaint been filed, the elimination of these rates

would not have been accomplished. Our action was not entirely selfish because it was not a matter of market competition; our action was purely in the interest of our patrons.

In 10 years there has not been an important live stock rate case affecting rates in this territory in which we have not been interested; sometimes entirely for the benefit of the patron and sometimes in the joint interests of our patrons and ourselves. Shortly after the beginning of the world war, railroad service had so slumped that our patrons were losing vast sums. In June, 1917, we organized the claim bureau which has since handled approximately seventeen or eighteen thousand claims and has collected nearly a million dollars. Our charges in this department cover expenses of operation. We have on file hundreds of letters of commendation from our patrons saying that never before have their claims been given such satisfactory service. I do not mean that there have been no complaints, but the results as a whole have been satisfactory.

Prior to 1920 the Government had maintained ante-mortem inspection to designate animals unfit for food. In 1920 Congress cut the appropriation of the Bureau of Animal Industry to the point where the Bureau removed this service. We felt it absolutely necessary to continue it because if abandoned the packer would protect himself as he has in some markets where the service was abandoned, by buying cattle from a dollar to two dollars a hundred cheaper where the buyer thought there might be a possibility of condemnation. We, therefore, made arrangements for our cattle scale men to perform this inspection under authority of both the packers and the Government. Some of our commission men estimate that the result is to save our patrons from $10 to $20 a head from 7,000 to 9,000 cattle handled.

Formerly it was customary after selling, feeding and watering cattle, to turn them into the alleys and let them gradually work their way to the scales, sometimes remaining in the alleys four or five hours. The result was a constant shrink and bitter complaint by some of our most influential patrons. Our members devised a plan to have a representative of theirs present at each scale to expedite weighing. Now each firm weighs by number. This num-

ber is placarded on each scale as the turn of the firms comes [fol. 861] up; their stock are kept in pens until then, when they are taken from the pens to the scales and immediately weighed. One of our patrons told me, after this system had operated for a number of months, that he thought it saved the patrons all of their commission and yardage charges. This inspection and assistance is carried on at an expenditure by the petitioners herein of about $14,000.

These activities would be impossible without some central organization. I cannot now think of anything we could do for our patrons' benefit that is not being done. They rely on us for help in all matters pertaining to the welfare of the industry. We are asked to help with legislation in the State Legislature and in Congress and with adjustment of the charges of carriers or other public or *or* semi-public service concerns. For 10 years, over half my time has been devoted to activities which of themselves do not selfishly benefit our members. Just now we are spending $2,500 in broadcasting the Omaha market through the radio for the benefit of our patrons, not an entirely unselfish proposition.

The following are the number of firms, the volume of business and the average in cars per firm per annum in the years mentioned, exclusive of horses and driven or trucked in live stock:

Year	Number of firms	Total Business	Average per firm per annum
1910	45	87,345	1,941
1915	50	98,946	1,978
1920	51	109,650	2,150
1925	57	110,584	1,940
1926	58	104,373	1,799

the figures for 1910 are thus but one number at variance from those of 1925, showing plainly that the membership has not increased out of proportion to the increase in business. The slump per firm per year for 1926 does not come from an unusual increase in the number of members or firms, because the membership is lower in 1926 than it was in 1915. The figures for members of the Exchange are as follows: 1910, 201; 1915, 245; 1920, 243; 1925, 222; 1927, 220. In giving the volume of business, I have excluded

driven in and trucked in animals because the yard company's records do not reduce driven in and trucked in live stock to cars. As a matter of fact, the driven in and [fol. 862] trucked in business has increased in the last five or six years, from a negligible percentage 20 years ago to 21% or better of the hogs; and if the driven in and trucked in animals were included, the number of cars per firm per annum would be increased.

The volume of business in 1924, 1925 and 1926, exclusive again of cars of horses and driven in and trucked in live stock was as follows:

In 1924	129,301
In 1925	110,584
In 1926	104,373

while cars for the first five months of 1927 as compared with corresponding periods in the three preceding years, were as follows:

In 1924	56,845 cars
In 1925	47,100 cars
In 1926	43,053 cars
In 1927	38,337 cars

Referring to the live stock associations represented at the hearing before the Secretary, I have attended their meetings almost regularly for twenty years. My judgment is that the members of these associations comprise possibly 2% of the shippers to the Omaha market. There are associations in Nebraska, South Dakota and Wyoming. The Nebraska association claims 500 members, probably 100 of whom would be commission men, stockyard representatives and railroad men, leaving a net membership of approximately 400. On June 30, 1926, there were registered 5959 brands in Nebraska; on April 6, 1927, 6751. At the recent session of the Legislature, a law was enacted requiring registry of all brands. It is the estimate of those familiar with the cattle business in Nebraska, and myself, that by July 1, 1927, when the law becomes effective, there will be in Nebraska at least 10,000 registered brands, or a ratio of members to brands of 400 to 10,000.

In Wyoming the association membership list contains 434 names and there are registered in that state, 16,100 brands.

In South Dakota last year they had 160 members and 8058 recorded brands. The South Dakota Legislature recently adopted some such law as was passed in Nebraska, which will materially increase the number of brands and [fol. 863] materially affect the ratio of members to cattle men in that state.

There are market agencies in Omaha, other than those belonging to the Exchange. From time to time since its organization, independent commission firms have operated. There has never been a time during their operation, when the railroads and yard companies, the banks and buyers, did not trade with them. Thirteen or fourteen years ago the Farmers Union was organized. Our people trade with them without let or hindrance. They have done an enormous business, in one year about 10% of the total receipts of the market. A little later, the Wool Growers Commission Company was organized with a very much reduced commission. It operated for two years or more, when the owner, finding that he could not operate on his cut commissions, materially increased same and went out of business shortly thereafter. Since then one or two others have opened independent concerns on a split commission basis, but have not been successful. Today there is the Farmers Union and one independent concern, both of which trade with our people with no opposition from our rules. I do not know what amount of business they are now doing. When the Packers and Stockyards Act first became effective, Howard Gore, one of the arbitrators in our then pending commission case, himself drafted our Rule 38, which is as follows:

No member of this Exchange shall be required or authorized by any rule or by-law to do any act that shall in any manner violate the provisions of or be in conflict with the Packers and Stockyards Act of 1921, or any of the rules and regulations of the Secretary of Agriculture lawfully issued thereunder.

The Farmers Union started out on our schedule with a patronage dividend. About two years ago they cut their commissions about in two for one year. They have now

gone back to approximately our schedule and I believe propose to pay patronage dividends. It has been our policy to have a uniform schedule of rates. There are many reasons for it. (Conceded by the Government that there must be uniform rates.)

Without uniform rates the market would soon become an uncontrollable scramble for business, resulting in a chaotic market condition and a development of dishonesty with the resultant losses to its patrons. There is just as much reason for uniform rates on a public market as uniform freight rates in the tariffs of the carriers.

When this case was instituted, our members took steps [fol. 864] to ascertain the attitude of their patrons to the advance proposed in our schedule No. 2. Several of them sent out questionnaires. Others wrote letters; others talked to individuals. Our office furnished a form which numerous shippers were asked to sign, the result being that out of shipments approximating a little over 100,000 cars for 1926, shippers representing over 33,000 cars expressed their satisfaction with present rates and their hope that no disturbance would be made in rates with a possible deterioration in service. A perusal of hundreds of these letters, leads me to state that could our entire patronage list be canvassed, we should have had signatures for practically all our business. Shippers are not on the whole dissatisfied with our charges. They are, on the whole, satisfied with our services. They do not seek to have our remuneration decreased; they wish us paid well enough that they may demand the best possible service; many of them suggest increased remuneration. It is only when their minds are inflamed by perpetual disturbers and trouble makers that they pass resolutions condemning their very best friends, the commission men, asking for reductions in rates, and even then often privately they say, "Well, we were in a meeting and Mr. Blank talked to us and we voted 'yes' or 'did not vote at all,' but we do not want your pay out if that means decreased efficiency." I know this of my own personal knowledge. I have our patrons in the office day after day, sometimes one or two, sometimes a dozen or fifteen or more a day, and make it my business to ascertain whether or not the services performed by our members are satis-

factory, whether or not they are satisfied with the remuneration they are paying, and I have had but one man in six months tell me that he thought our commissions were too high, and that day the market was half a dollar lower and I did not blame him. Generally, and almost without exception, our people are satisfied. They are not the ones who have made the trouble in this case and had they been allowed to vote or express their opinions, there never would have been a Packers and Stockyards Docket 143.

The entire charge made by the commission firms, irrespective of whether it is a little higher or a little lower, is not a principle or even an important factor in the general situation regarding the live stock industry. It is a minor factor. It is almost the most negligible factor. The important factors are transportation charges, expenses at home, [fol. 865] expenses en route. The commission charge is the least of the charges the shipper pays. In the publication issued by the Bureau of Economics at Washington, the live stock purchaser's dollar is distributed as follows: To freight, 5-6/10¢ in 1924; 4-5/10¢ in 1925 and 4-3/10¢ in 1926; to other distribution costs of which our commission charge is probably the minor item, 3¢.

The cut ordered by the Secretary, and approximately 1/10 of 1% of the value of the product, would make no appreciable difference to the live stock industry. Not one shipper out of five knows what his commission is. He knows it is a negligible amount. It doesn't amount to much compared with the other charges he has to pay and he never would recognize 1/10 of 1%.

I am personally acquainted with every member of the Exchange including the member owners of the petitioners herein. I have known the old timers since 1890 and the younger members since they joined. Each of them must come to my office to file application, receive his certificate and have a little chat with the Secretary before he starts business. I have prepared a statement as to each firm, showing the length of time each member or each individual petitioner has been in business. This statement shows that the live stock commission business is not a fly-by-night affair; that it is based on long years of experience; that a man may not hop into it and within a few weeks or months hop out again; that generally, long apprenticeship is

served; that the country must know that those engaged in it are experienced and that live stock consigned to them will be carefully, honestly, expeditiously and economically handled and the returns therefrom safeguarded. The existence of numerous firms each seeking to render the best possible service, gives patrons unlimited competition and assures them of high grade service unexcelled in any other line of business within my knowledge.

The data I have compiled shows that of the approximately 220 members now in the Exchange, 126 are owners, or part owners of Omaha commission firms. The average tenure of their membership in the Exchange is 16 years. We have 16 corporations, 19 individually owned concerns and 23 partnerships. Of the 126 owner members, 121 are engaged in business on the Omaha market. The 58 firms have 463 employees and owners, an average of almost 8 owners and employees to the firm. Ten firms were organized in the 80's; 13 were organized in the 90's; 9 were organized [fol. 866] between 1900 and 1909; 12 firms commenced business from 1910 to 1919 and the rest in the 1920's. The highest number of employees of any organization is 24 and the lowest, 2. This compilation emphasizes what I have heretofore said concerning the character of the relationship between the petitioners herein and their patrons. I have frequently heard country men say, "I would not let any other than John Jones sell my cattle or hogs or sheep, as he knows me, his father sold stock for me before he ever came into the yards. I have implicit confidence in him, and would under no circumstances think of leaving him." Other shippers say the same thing about their commission man's ability to assort live stock properly. Proper assorting may mean a greater saving, or greater returns than the purchaser's entire yard costs. Data concerning the individual petitioners is as follows:

The American Live Stock Commission Company, organized 1925; owned by C. A. Oss, who joined the Exchange in early 1927, succeeded to ownership when his brother, George Oss, died accidentally some months ago. The present owner has been on the market in different capacities for approximately 10 years. There are 5 employees including the owner.

Blanchard & Keenan, a partnership, composed of B. B. Blanchard and R. R. Keenan. Members of the Exchange respectively for 18 and 14 years. Mr. Blanchard for years and years before becoming a member was employed in different capacities by Omaha commission men. Mr. Keenan, some time prior to joining, had come to Omaha from Chicago to work for another firm. The firm was organized in 1926, its members severing their connections with other firms and organizing a business of their own. They have 4 employees.

Bliss & Son, owned by Frank E. Bliss, a member of the Exchange for 23 years; the firm was organized in 1884 by his father; the present owner worked for years for the firm and in the live stock commission business before obtaining a membership. The concern has 5 employees.

Bliss, Wellman & Hopkins, owned by Frank C. Bliss, Frank F. A. Wellman and Clare H. Hopkins, respectively members 20, 20 and 15 years; organized 1907; 9 employes. Bliss was a farmer all his life before coming to the Omaha market.

Boetel Live Stock Commission Company, owned by [fol. 867] Charles W. Boetel; member for 10 years; employed on the market for many years prior to that as yard man, salesman, etc.; 4 employees.

Bowles Live Stock Commission Company, a corporation owned by W. C. Davidson, a member for 11 years; organized 1904 by Bowles Brothers of Chicago and Kansas City; Davidson, prior to his Omaha membership was actively engaged in the live stock business at Omaha, Kansas City and Chicago; has devoted practically his entire business life to the business; 11 employees.

Bryson Bros., a corporation owned by N. R. and T. H. Bryson, members respectively for 21 and 17 years; organized 1914; both members prior to that were employed in the live stock business by other concerns; 6 employees.

A. G. Buchanan & Son, an- individually owned by *by* W. W. Buchanan, member for 12 years. His father, A. G. Buchanan, was in the live stock business in Omaha before there was a stock yards, having been connected with the old Boyd Packing Company in the early 80's. Present owner associated himself with his father on leaving school and has devoted his entire business life to the business. The firm

today serves patrons who shipped to the father before the present owner was born. The firm was organized in 1893 as Boyd & Buchanan; 1898 became Nye & Buchanan; later the present firm; A. G. Buchanan was associated with other commission firms in Omaha before organizing the Boyd & Buchanan firm; there are 5 employees and the firm is an outstanding example of my statement that the business requires and receives experienced help.

Burke, Richly Co., firm No. 42. A partnership; members, Charles Burke, Webster Mills, Everett H. Burke, members of the Exchange for 25, 15 and 8 years respectively. It has operated under its present name for 20 years, for 12 years prior to that as George Burke Company, George Burke being a brother of Charles Burke; for 10 years prior to that, or back to 1885, as George Burke & Frazier. Even before that one of the owners had been in the live stock business when the stock yards were located in Council Bluffs and North Omaha. Everett Burke is a son of Charles Burke and was yard man and junior salesman for the firm before the war. When he returned from military service he became a partner and has since been [fol. 868] actively engaged in the business. There are three employees.

Byers Bros. & Company, firm No. 34, a Nebraska corporation, with stockholders at Chicago and Omaha. Five stockholders, H. G. Kiddoo, C. W. Owen, E. C. Marsh, Roy B. Greer, R. P. Johnson, have been members of the Omaha Exchange respectively 16, 18, 11, 6 and 3 years. The firm began business in Omaha in 1886 under Mr. Dick Byers, whose brother's son is now engaged in a like business in Chicago. Each of the Omaha stockholders has risen from the ranks. Mr. Kiddoo, present manager, began as the firm's bookkeeper many years ago, succeeding to the management on Mr. Dick Byer's death. C. W. Ower was yard man and feeder buyer during all of his membership and for years prior thereto. The present steer salesman, Roy B. Greer, was yard man, junior salesman, cow salesman and is now steer salesman, each step in advance coming as the result of experience and proven skill. There are 13 employees and stockholders all told. In addition, there is H. T. Gant, who handles the sheep consigned to this firm.

John Clay & Company, firm No. 18, a partnership owned by John Clay, Frank Connor, C. A. Kleman, Allan F. Wil-

son, C. G. Smith and W. E. Reed, respectively members of the Omaha Exchange for 30, 27, 23, 3 and 26 years; organized 1886, two years after the opening of the Omaha yards and is one of the oldest commission firms in the country; 24 employees in Omaha. Messrs. Wilson, Smith and Reed are junior partners, taken into the firm from branch houses a few years ago; Mr. Reed, manager of the local house has been connected with the firm for over 36 years.

Clifton Commission Company, firm No. 10, a partnership; members, Clay C. Clifton and Claude Clifton, father and son, members of the Exchange for 38 and 31 years, respectively; organized 1890. Before the firm was organized the father was a shipper to the Omaha market. Before it was organized, C. C. Clifton was a member of the firm of Dorsey Bros. & Clifton, which operated during 1887 and 1888. This firm is another illustration of the fact that the commission business at Omaha is in the hands of men whose lives have been given to the business. It also illustrates the fact that our ranks have been filled largely from the country, from stock shippers who have come to the market and later have gone into the business; or from sons of shippers who have gone to work for Omaha firms and later have become members. More than half of our members are former stock shippers, farmers, or sons of stock shippers.

[fol. 869] Clow, Lush Company, firm No. 2, successor to Byron Clow & Co., a corporation owned by Byron Clow, J. E. Lush and F. M. Youngblood, members respectively 18, 10 and 10 years; all resident owners. The Byron Clow firm was organized in 1909; the others were formerly engaged with other firms; 8 employees, including the owners. Mr. Youngblood was formerly a butcher and farmer and the others were farmers.

The Corn Belt Commission Company, firm No. 52, individually owned by M. F. Guilfoyle; resident owner; member for 18 years. For many years prior to organizing his own firm in 1920, had been employed by other firms as yard man, junior salesman and senior salesman. He has 5 employees.

Cox Jones Commission Company, firm No. 43; partnership composed of W. F. Bavinger and W. T. Cox, both of

Omaha, members respectively 16 and 18 years. Originally organized under the present name in 1899; changed in 1912 to Cox, Jones, Van Alstine Co., the former name resumed in 1921. The present partner, W. T. Cox, is a brother of the Cox who founded the firm. Bavinger came to the firm as an employee a great many years ago. W. T. Cox has been on the market 28 years, first as yard man, then as salesman of odds and ends, then on butcher stock, then on steers and is now head cattle salesman. Total personnel, 13 persons.

Dearth & Company, firm No. 49, individually owned by W. J. Dearth; originally organized in 1890 as the George M. Wood Sheep Commission Company. Present owner was employed for 4 years in the Chicago packing houses; later was associated with one of the old firms in the Omaha market; became a partner of George M. Wood some years ago and has operated in business since Mr. Wood's death. Has been in the commission business approximately 27 years; total personnel, 3.

W. F. Denny & Co., firm No. 35; individually owned by W. F. Denny; successor to Crill, Denny & Company, organized 1889, Mr. Denny having come to Omaha from Chicago some time prior to that; member of Exchange 38 years; total personnel, 4. Mr. Denny has devoted practically his entire business life to this business. Before entering it he was, for three years, employed by the B. F. Murphy Packing Company in Chicago. His father was a commission man on the Chicago market shortly after the Civil War; and his son has, since leaving school, been associated with Mr. Denny in Omaha.

[fol. 870] Donahue Bros. Inc., firm No. 27, a corporation owned by Mr. T. J. Donahue, Leo Ryan and Charles Hammer, all resident owners; organized 1921; members respectively of the Omaha Exchange for 24, 4 and 4 years. Mr. Donahue worked for numerous other concerns on the market before establishing his own business. Messrs. Ryan and Hammer came to the market from Iowa farms. Mr. Hammer, aged between 50 and 60 years, had been a farmer practically all his life. Mr. Ryan is a young man, whose father formerly worked in the yards for the yard company before taking up farming in Iowa about 20 years ago. Total personnel, 8.

Allen Dudley & Co., firm No. 19, a partnership owned by Allen H. Dudley and Chester P. Dudley, members for 20 and 15 years respectively, both resident owners. Organized 1895 by W. H. Dudley, father of the present owners, who, prior to 1895 was in the business as member of the firm of Gassman & Dudley. His former partner developed unfortunate characteristics which caused the dissolution of the firm, and Mr. Dudley paid to its creditors every dollar with which he was in any way connected. In few instances have as strenuous efforts been made to discharge obligations of partners as were made by him in this connection.

Dworak-Stolinski Commission Company, firm No. 11, a partnership composed of Frank Dworak and Theodore J. Stolinski, members respectively 14 and 8 years. Dworak worked for other concerns before entering the business himself; Stolinski was in the credit department of one of the packing houses for 16 years. Total personnel, 4.

Farris-Marcy Co., firm No. 3; individually owned by T. W. Farris, member for 19 years; successor about 1911 to N. E. Acker & Company, operating until 1916 as Farris-Burrinton & Marcy and thereafter under the present name. The Acker concern dated back to the organization of the Exchange in 1889. Up to a few months ago there were employees who had been with the Acker concern during practically the entire continuation of the organization. Mr. Farris has 3 employees, besides yard man.

Frazier-Johnson Co., firm No. 44, a corporation owned by William Frazier, resident owner and member for 24 years; organized in 1906, succeeding the Greer-Mills Co., which was established in 1904. The present owner came to the market in the early days from northwestern Nebraska, where he had for years been a prominent stock raiser and shipper. He has been in the live stock and agricultural business since he was 16 years old. Total per-
[fol. 871] sonnel, 7.

Fonda-Kells & Christie Company, firm No. 53, a corporation whose stockholders are Messrs. Fonda, Kells and Christie, who have been members for 27, 17 and 12 years respectively; all resident owners who came up in business along the usual lines.

The Gant Live Stock Commission Co., firm No. 36, individually owned by H. T. Gant, Omaha resident and mem-

ber of the Exchange for 13 years; in the live stock business for many years thereto.

The Globe Live Stock Commission Company, firm No. 60, a partnership composed of Henry Wagner and D. P. Hogan, members of the Exchange for 12 and 2 years respectively. Both Omaha residents; successor to the firm of Wagner-Dolezal which commenced business in 1921.

The Great Western Commission Company, firm No. 28, a partnership composed of C. L. Peterson, J. O. Allsworth, John Boetel and M. S. Morrill, members respectively for 18, 21, 6 and 5 years; all Omaha residents; organized under its present name in 1903, succeeding another firm which had been in business since 1893. The present mayor of Omaha, James C. Dahlman, was once a member of the predecessor firm.

Green-Madden & Company, firm No. 20; partnership owned by G. W. Green and Walter Madden, members of the Exchange for 23 years; both Omaha residents; both came up from the ranks, having directed a firm which was organized on the Omaha market in 1887.

Ingwersen & Daugherty, firm No. 12, individually owned by R. B. Daugherty who recently purchased Mr. Ingwersen's interests. Mr. Ingwersen came to the market years ago from Chicago where he was connected with a concern which has been in existence 40 or more years, his father and uncles having preceded him. Mr. Daugherty came to the market first as a yard man, then up through the different branches of salesmanship.

The Interstate Live Stock Commission Co., firm No. 4, a partnership owned by Charles F. Cox, R. L. Reynolds and J. J. Donahue, all residents of Omaha, members of the Exchange 17, 16 and 6 years respectively; organized September 1, 1910; the members came up through the ranks, having worked for other concerns prior to the organization of this one.

[fol. 872] Jackson Live Stock Company, firm No. 54, individually owned by T. A. Jackson of Omaha, member for 20 years who succeeded his father. The present firm was organized in 1909 as the Jackson Signal Company, Mr. Jackson taking over Mr. Signal's interest in 1918.

Jacob Jacobs Live Stock Commission Co., firm No. 45, individually owned by Jacob Jacobs; organized 1925, Mr.

Jacobs having for years before been a cattle buyer for the Wilson Packing Company; he has employed a hog salesman, cow salesman and three yard men.

Jensen-Sterba Live Stock Commission Co., firm No. 3, partnership owned by Jim Jensen and Frank Sterba, both Omaha residents, members of the Exchange 10 and 3 years respectively. Both of them have spent practically their entire business life handling live stock.

Laird Live Stock Commission Co., firm No. 37, individually owned by J. M. Baird, member for 23 years having come to the Omaha market from an Iowa farm considerably prior to joining the Exchange. He has been connected at different times with two or three other commission houses. His son is in the business with him.

Laverty Brothers, firm No. 29, individually owned by R. M. Laverty, member of the Exchange 21 years. His concern succeeded one of the oldest on the market, Savage & Green, who started in business in North Omaha before there was a yard on the south side. Later the firm was changed to Savage, Kelly & Abbott and in 1908 assumed the present name; total personnel, 8; Mr. Laverty has charge of the office and is senior salesman.

Lee Live Stock Commission Co., firm No. 21, a corporation owned by W. W. Rapp and Howard Moberly, members 9 and 17 years respectively, both Omaha residents and both having come to the yards from the farm. This firm is successor in direct line to one of the oldest firms on the market, Keenan & Smith; later Draper Smith; later Rice Brothers and later the present firm.

Lindley-Cahow Co., firm No. 13, organized as the Lindley Commission Company in 1916 and changed to the present name in 1925. The stockholders are now Lindley, Cahow and Allyn, members 13, 24 and 3 years respectively. Lindley was for years live stock agent for one of the railroads and later with a prominent live stock concern in Chicago. [fol. 873] Cahow came to the market in 1890 as a stenographer for a commission firm. Mr. Allyn was for years office manager and accountant for the firm and was taken into the corporation three years ago. Total personnel, 14.

McAdams & Ihnen, firm No. 5, a partnership composed of W. H. McAdams and Robert Ihnen, members for 6 and 17 years respectively; organized 1922, Mr. McAdams hav-

ing been with other firms as salesman and Mr. Ihnen having been for years with a commission firm operated by his father. Mr. Ihnen has never worked anywhere else but on the Omaha market; Mr. McAdams has devoted his entire business life to handling live stock, following his father in the business.

Frank McDonald Live Stock Commission Co., firm No. 4, individually owned by Frank McDonald of Omaha, who first became a member in 1912, later left the market and then later came back and re-engaged in business, taking out another membership. He originally lived on a farm in western Iowa.

Martin Brothers & Company, firm No. 46, a corporation owned by George E. Martin and W. S. Burmeister of Chicago and Brad Hickox, A. D. Majors and R. M. Burriss of Omaha; organized originally in 1886 in Omaha and in Chicago in 1872.

Melady Brothers, firm No. 38, individually owned by E. P. Melady of Omaha, who has been a member of the Exchange for 26 years.

Mutual Live Stock Commission Company, firm No. 30, a partnership composed of D. C. Johnson and J. T. Sullivan, members for 17 and 35 years respectively.

Omaha Live Stock Commission Company, firm No. 22, a corporation owned by A. E. Rogers, L. J. Hough and H. A. Ragoss, all of Omaha, members of the Exchange 23, 17 and 8 years respectively, and tracing back to the early years of the market.

Ralston Live Stock Commission Company, firm No. 14, individually owned by John Ralston of Omaha, member of the Exchange on and off for 28 years.

Randall & Company, firm No. 6, a corporation owned by A. J. Randall, R. A. Gross and J. J. Robb, members 23, 17 and 8 years respectively; organized 1921; all of the members have worked their way up from the ranks.

Record Live Stock Commission Company, firm No. 56, [fol. 874] individually owned by Clifford McCleneghan, who succeeded his father who had been on the market a great many years. The firm was originally organized in 1913.

Roberts Brothers and Rose Live Stock Commission Co., firm No. 39, a partnership composed of H. H. Roberts and E. A. Rose, members of the Exchange for 25 and 24 years

respectively. Mr. Roberts succeeded his father, John Fitz Roberts and has spent his entire business life on the Omaha market.

L. E. Roberts & Company, firm No. 47, a corporation owned by A. A. Daly, member for 22 years.

Charles O. Robinson & Company, firm No. 31, a partnership composed of Carl Wallen, Ward Burgoin and Chris Hansen, members of the Exchange 16, 4 and 4 years respectively; organized 1921.

Rosenbaum Brothers & Company-Ingwersen Brothers, firm No. 23, a corporation operated by Rosenbaum Brothers & Company. Organized on the Omaha market by Ingwersen Brothers in 1897. The present stockholders are A. Wertheimer and E. H. Ingwersen of Chicago, members of the Exchange 26 years, and A. G. Smith, F. L. Crone and H. K. Wertheimer of Omaha, members 21, 19 and 3 years respectively.

Security Live Stock Commission Company, firm No. 15, individually owned by John Cunningham, member for 18 years, the firm tracing back directly to 1890.

William R. Smith & Son, firm No. 7, a partnership owned by John Smith of Omaha and J. E. Estes of Chicago, members of the Exchange 23 and 18 years respectively.

Snyder-Malone-Coffman Company, firm No. 57, a corporation owned by Matt Malone, member for 20 years; the firm tracing back to 1908; Mr. Malone has been on the market 28 years and shipped to the market 11 years before coming to Omaha.

Tagg Bros. & Moorhead, firm No. 48, a corporation with 7 members, whose aggregate period of membership is 138 years; A. W. Tagg, 17 years; W. B. Tagg, 29 years; E. J. Wright, 18 years; H. W. Johnson, 10 years; A. E. Anderson, 21 years; M. C. Wilkerson, 20 years, and Mrs. A. B. Lyman, administratrix for her deceased husband, who joined 23 years ago; all of Omaha; the firm dates back in direct line to 1884.

[fol. 875] Triangle Live Stock Commission Co., firm No. 40, a partnership composed of George E. Parker, C. J. Horn and John O. Neilson, who have been members for 23, 21 and 5 years respectively.

Williams & Sons, firm No. 24, a partnership composed of J. M. Williams and L. E. Williams, sons of A. L. Williams,

who first organized the firm in 1892. A son of J. M. Williams is in the business.

Winn Brothers, firm No. 16, a partnership composed of P. H. Winn and J. P. Winn, both members for 23 years, the firm tracing back to 1898.

Wood Brothers, firm No. 8, a partnership composed of Kay Wood, E. N. Munson, B. F. Roth, C. H. Cheyney and C. C. Johnson, members for 22, 17, 23, 4 and 11 years respectively, all of Omaha except Kay Wood of Chicago; one of the old firms on the market.

Wood-Oswald Company, firm No. 58, co-partnership composed of Will H. Wood and H. J. Oswald, members 30 and 25 years respectively. Mr. Wood's family have been engaged in the live stock commission business for two or three generations back.

I know, in a general way, what the audits prepared by John M. Gilchrist Company show. I am able to state the general effect upon the petitioners in this case, of the application of the Secretary's order of November 19, 1926, if made permanent. I think it would put a lot of them out of business. I think one-fifth of them would go out of business, perhaps more than one-fifth, and that all the rest of them would have materially to depreciate the quality of service they have been giving. I do not believe there is a firm on the Omaha market that can give its present quality of service under the Secretary's order.

I have had frequent occasion as Secretary of the Exchange to prepare, amend, construe and test the application of schedules of live stock commission charges. I think I have helped every committee on rules in the redrafting of rules and preparation thereof since 1906. I have examined the schedule in the Secretary's order as to its workability and as to being able to understand and apply it. The selling schedule is either vague, indistinct or incapable of being applied without modification in the following respects: I do not know what is meant by "Mixed cars, cattle 60 cents per head, single deck, $15,00." I do not know what is meant by "Calves, 30 cents, single deck $15.00, double [fol. 876] deck, $18.00." To make that a definite rate that could be clearly applied, there is lacking a maximum and minimum. I would call it an unworkable schedule, one which could not be fairly interpreted. You must know

where you may start and stop and in this order you have no stopping or starting place. You have a figure which may be in the middle; you don't know, if you have mixed cars, whether you are going to take the head rate on the cattle and go as far as they will, stopping at $15.00, and then take the head rate on the calves and do likewise with them.

The paragraph for straight cars in the Secretary's order is also unfair. It prescribes $15.00 for a car of cattle regardless of the amount of work entailed in handling that car. Our cattle cars, unfortunately for this schedule, are not standardized. There are a few old style, obsolete, 34 foot cars. The Great Northern Railroad has about 400 44-foot cars. The same schedule of $15.00 applies to both of them filled with the same kind of cattle. One man in one train might have a 34-foot or a 36-foot car, sold for $15.00 while his neighbor next to him would have a 44-foot car that sold for $15.00.

In the schedules prepared and filed by the petitioners themselves, we had a minimum rate on all cars, that is a minimum charge for any one car no matter how short it is or how few cattle it contains. The maximum was a certain number of dollars for a certain number of head; above that, so much was charged for length of car.

Again, in the Secretary's order it is stated that cattle and calves from the same car should be called a straight car; but in the selling schedule, cattle and calves are in the mixed car schedule; so I don't know and I don't believe the Secretary knows whether a car containing some cattle and some calves was intended as a straight car or a mixed car. You could not apply the language and the figures under the head "Mixed cars" any other way than to treat cattle and calves as constituting mixed cars. There would be no ambiguity in the case of cattle and hogs in the same car. In such case, I would apply the schedule as a mixed car, getting all the money I could under the straight head rate, and in figuring revenue would pay no attention to the figure $15.00 and $12.00 set opposite each description of live stock. In some places the railroads call cattle and calves a mixed carload and in some places they do not. Ten years ago there were as many mixed car regulations in the tariffs of [fol. 877] the carriers as there are states of the Union. They are trying to standardize them but they have not yet

succeeded in doing so. In some territories cattle and calves are mixed, in others straight. Rates promulgated during the war, we have succeeded in toning down in some territories. The matter is still in somewhat chaotic condition.

Other ambiguities were pointed out by Mr. Ross in his testimony yesterday, especially in the selling schedule and in the matter of drafts. The buying schedule is faulty in failing to provide rates for some classes of live stock to be trucked out. The buying schedule provides a rate per car. I do not know just how you would apply that to cattle driven out.

The Secretary's order permits the market agencies to file a schedule which will not exceed the rates prescribed, but I do not think that there is any way we could prepare a schedule which would stay within the limits of the order and still be workable. There are no such glaring ambiguities in tariffs 1 and 2, filed by us. There is no commission schedule which will fit every case, but in my judgment there are more ambiguities and fewer opportunities for correct interpretation in the Secretary's order than in either 1 or 2.

The half rate allowed on re-sells or "Seconds," was allowed primarily to increase buying competition on the market, which in turn increased returns to our patrons. These re-sales are to traders who sometimes buy an order to ship to the country and have to sell the portion they cannot ship, and other times they buy to re-sell; pure speculation. It is to the interest of the market to have these speculators there to increase the buying power. If the rate to dealers and speculators were made the same as for incoming live stock, a large percentage of those in the business would have to go out. In talking with one of the hog speculators the other day, he told me that his profit was not as much as the difference between what we are charging them and what the Secretary's order says we should charge them.

In my judgment the commission firms would not, in fact, adopt and put into effect the schedule charging dealers and speculators the same as incoming live stock. Our members feel that we could not, even if allowed to, charge the Secretary's figures, because they feel that it would limit com- [fol. 878] petition, which would in turn affect the results to the patron.

Approximately twenty-two out of twenty-four thousand copies of the Journal-Stockman are paid for by the commission firms and sent to their customers. I think the subscription lists of the commission firms are made up almost entirely of people who request that the paper be sent to them. They ask for it.

The Secretary's order does not provide any rate for cattle purchased to be trucked or driven in. That portion of the order which provides for drive-ins at the rate of 70¢ on cattle, 35¢ per head on calves, 30¢ per head on hogs, I would understand to apply to the number of head made up on any basis of so many head in the car. In the next paragraph we have 300 head of sheep or a fraction thereof at 20¢ per head with a maximum of $12.00 up to and including 150 head. I would not understand that that applies to cattle or hogs.

Cross-examination:

As to whether, if the commission men should charge the reduced rates provided for in the Secretary's order, that would lessen the friendship of the shippers for them in any way, there is only one obvious answer: No matter how friendly I am with you, if you give me money, I am going to take it and like it. I know of no reason why the charging of less rates as required in the Secretary's order should decrease the friendship of the commission men for their patrons. It might not decrease the friendship, but it would decrease the quality of service.

Commission men exercise their best efforts to get live stock sold promptly on receipt. I have seen it sold in the chutes immediately after unloading; I have seen it held in spite of the most diligent efforts, for two or three days. Market conditions govern that entirely. Cases in which stock is held two or three days are cases in which no satisfactory bids are received sooner. The commission man goes as far in holding live stock over from day to day, for better prices, as his judgment indicates he should go. If the shipper is on the market he is communicated with. Under some circumstances, the commission man will call his patron in the country and ask for instructions. The probabilities are that the shipper will tell him to use his judgment.

[fol. 879] Live stock do not shrink in the pens to anything like the degree they do in the alleys. Whether they shrink materially in the pens depends on whether they are properly filled. Live stock in the alleys are constantly disturbed by pedestrians, salesmen and buyers and hay wagons and every time they are moved they shrink. In the pens they are resting, eating and drinking undisturbed. There is some shrinkage in the pens, I would not go so far as to call it material.

Commission men make a practice of filling live stock held for sale. The shipper pays for it. I think that filling tends to preserve the health and comfort of the live stock. It is done to add to the profits of the shipper. The fill adds to the shipper's profits, not by putting more actual meat on the live stock, but by adding the weight of the feed and water which the animals consumes. If the fill were such as to make it evident that the stock was overfilled, the results would not be beneficial to the owner. The idea is to give the animal a reasonable amount of fill. I do not mean that the fill is carried only so far as to get away with it without being detected. It is carried on as is the custom in all public markets, a reasonable fill which is expected by the buyer. The increase in weight due to the fill is simply an increase in the weight of the stomach content.

I have heard of live stock being withdrawn from a firm to which shipped and turned over to another firm for sale. It occurs very rarely, probably not once in a thousand shipments. I do not know of any phase of the service which the commission men render their patrons, which is not recorded in the data taken from the firms' books by Gilchrist & Company and by the Government's auditors. I do not know that all of the costs of this service are included; I do not know that they were not all included.

The expenses of the Exchange are defrayed from assessments. These are pro rata assessments, per membership, and per car assessments by us upon cars of live stock handled. The former every member pays; the latter are paid by commission men only. I know of no such assessments which are not included in the audits.

The pro rata assessment is a flat assessment of so many dollars per member.

The decrease in freight rates in 1910 caused an increase [fol. 880] in business on the Omaha market. As soon as

we got the decision, we advertised it all over the east and our buyers told me that they noticed a decided increase in business because of the lessened freight cost on shipments from the market. That directly affected the revenue to shippers because with each added buyer on the market competition became more keen, demand was increased and prices went up. The increase was in the volume of business shipped east, which meant an increase in the number of buyers with more competition and better prices. I do not mean that the reduced freight rate enabled buyers to obtain live stock cheaper. Increased competition does not mean that a buyer pays less; he pays more. Two buyers may be able to get together, four buyers cannot. The buyers do not have to pay more than they do at other yards; they could pay more because of the lessened freight rates, without being dollars out of pocket. Any factor like a freight rate would have a similar effect. Commission charges are not like freight rates. The buyer does not pay the commission charge; the seller pays it and the buyer is not concerned with it. In my opinion none of the charges which the seller pays affect its prices to the buyer.

The members of the Omaha firms who reside in Omaha, not covered by my previous testimony are as follows: American Live Stock Commission Company, firm No. 50, C. A. Oss, resident owner; Blanchard & Keenan, firm No. 2, Messrs. B. B. Blanchard and R. R. Keenan, resident owners; Bliss & Son, firm No. 33, Frank E. Bliss, resident owner; Bliss, Wellman & Hopkins, firm No. 25, Frank C. Bliss, Frank F. A. Wellman and Clare H. Hopkins, resident owners; Boetel Live Stock Commission Company, firm No. 17, Charles W. Boetel, resident owner; Bowles Live Stock Commission Company, firm No. 9, Win C. Davidson, resident owner; Bryson Brothers, firm No. 1, W. R. and T. H. Bryson, resident owners; A. G. Buchanan & Son, firm No. 51, W. W. Buchanan, resident owner; Burke-Richly Company, firm No. 42, Messrs. Charles Burke, Webster Mills and Everett H. Burke, resident owners; Byers Bros. & Company, firm No. 34, H. G. Kiddoo, C. W. Owen, E. C. Marsh, Roy B. Greet and R. P. Johnson, resident owners; John Clay & Company, firm No. 18, W. E. Reed, resident owner; Clifton Commission Company, firm No. 10, C. C. and Claude Clifton, resident owners.

Going back to my previous testimony as to the effect on prices of charges paid by the seller, the seller must take the market for that live stock regardless of the cost to him. [fol. 881] If the producer ships his stock to market and a price is not offered which will pay his cost of production, he can withdraw it and hold it for a better price. He might ship it home. That has been done in isolated cases. As a practical matter, however, when live stock has once reached the market it is sold at the market first tried or some other market. A very small percentage is re-shipped from one market to another. Prices at different markets are generally close enough together to make it a strong gamble to forward it from one market to another. The difference in prices would rarely compensate for increased freight charges, shrink and other expenses.

Once in awhile a shipper fixes a minimum price—puts a string on his stuff. Ordinarily he relies on his commission man's judgment as to when to sell and what price to ask. If his confidence were misplaced it would not be practical for him to withdraw the shipment from the market or ship to another market. Any time prior to selling, the owner may demand and obtain his live stock. As a practical matter, it is not done, because he has faith in the commission man and knows he is obtaining the market. He may demand the return of his live stock without any additional cost. If he took it home or to another market he would have to pay the freight expenses, but he would not have to pay any commissions or yardage charges. He would have to pay for the feed. A yardage charge is made only when sale is made. Stock on the market has to be fed daily. The feed is charged for by the yard company. The commission man makes no special charge for the service. The yard company's charge is more than the actual cost of the product. That is one of their sources of revenue. Hay used to be $1.00 a hundred and corn $1.00 a bushel. Today I think the charge for corn at Omaha is $1.45. I do not know the charge for hay. I cannot state the cost per head of feeding live stock in the yards. It is not a constant quantity. It depends entirely on the cattle. For example, fat cattle and hay fed cattle would be given entirely different amounts. In view of this cost there is normally no advantage in holding live stock for a better price. Normally, live stock should

be and is sold on the day of arrival and for every day it stays it costs the owner more feed.

My figures for receipts at Omaha in 1926 and 1927 as compared to 1925 referred to total cars received exclusive of horses, trucked in and driven in livestock. Truck-ins and drive-ins have been increasing recently. I do not know how the gross revenue for commissions in 1926 compares [fol. 882] with that for 1925. Subject to variation on account of the class of live stock handled a diminution in the carload receipts would mean a reduction in the petitioners' compensation. I do not think the variation in class of live stock received in 1926 would be sufficient to make any appreciable difference in the remuneration per car. The audits introduced included commissions on drive-ins and truck-ins, which were reduced by the auditors to carload amounts.

Since the Exchange started operating, about eight independents have existed. Only two are still operating. In 1926 they handled about 6-5/10 per cent of the volume of business, in cars. One of them is a cooperative concern; the Exchange does not admit cooperatives to its membership. That leaves one which is eligible for admission. Because they are charging cut commissions we would not accept them. This one independent and non-cooperative handled a very small percentage of the business in 1926. The reason why these independents have not been able to continue in business is because the principle is wrong. The country does not have faith in them; their dealings have no guarantee. In some cases these firms have had no stability. The shippers in the country are intelligent and have not felt, generally, that their business would be safe in their hands. Seemingly, it has not been practical for a firm to operate advantageously as an independent at Omaha.

In stating that to put the Secretary's order in effect would, in my opinion, put approximately 20 per cent of the Omaha firms out of business, I do not believe I had the figure large or high enough. I do not care to raise it now, I prefer to be conservative. I based this opinion on my general knowledge of the business, my insight into the books of the concerns and the Government's audits, and upon my discussion with most of the plaintiff firms who told me they cannot operate under the Secretary's order.

They told me that they have tried the Secretary's order out on their own business and know what the result will be under an application, or a theoretical application of the order thereto. They calculated their income according to the Secretary's order and deducted therefrom their actual expenses and it put them out of business.

These 20 per cent are not confined to small firms or firms handling a small volume of business. Some of the largest firms on the market have said they could not operate. A complete answer to the question whether two firms cannot operate under approximtaely equally favorable conditions as to costs, would be as broad as all business condi-
[fol. 883] tions in all lines. I know of some reasons why they cannot. I am familiar with the Bowles Live Stock Commission Company and John Clay & Company. I do not know the amount of live stock they handle, or whether they are in approximately the same classes. Assuming that they are, I would say in response to the question whether there is any reason why one should find it more expensive to operate than the other, that the commission business is peculiar. A commission man must at all times be ready to handle a peak load. He may not disintegrate his organization when business is slack. The commission business today is a seasonable and territorial business. One firm may have a large business in a certain territory this year. Next year, because of drouth conditions or the winter on the range, that territory may ship him little, while the other firm may have been more fortunate territorially and its business holds up. The one which has lost business must and does maintain its organization. That would in large degree account for varying unit costs. I am assuming that the business of one firm has decreased without comparing it with any other firm. I have stated the general reasons for the ups and downs of individual firms and I cannot add any other reasons why one firm's cost of operation should be a great deal more than another's.

As to why one firm should have to pay more for a cattle salesman of the same ability, than another firm on the same market, how do I know that they are of equal ability? How could I know? I do not know that the ability of two salesmen is alike. People occupying similar positions in our and other businesses do not draw the same salary. One surgeon

charges one amount for an operation, another ten times as much; the first may have done as good a job as another. Mr. Brogan charges one fee for handling this case; another lawyer might charge more or less. As to whether a firm may determine by comparison with other firms operating under the same conditions, whether it is paying more or less than it should for its help, the securing of help is a matter of bargaining. If I am hiring an employee I make the best bargain with him I possibly can. So does the commission man. Some salesmen draw one figure and some another, but that is not entirely a correct measure of their value. One may be a better bargainer than the other, a better salesman of his own ability. The measure of a salesman's ability is, first, his ability to get the market for live stock, second, his personality and his ability to mix prop- [fol. 884] erly with the trade and convince the trade that he is doing all that is possible. That is as broad as business. Salesmanship is the same with us as in any other line. The successful salesman is not only the man who performs the act of selling, but who has all the other things which make up and round out a salesman. As to whether the number of stock he is able to sell in a year has anything to do with his ability, some of the best salesmen on our market sell much more stock than others, some much less. Experience cuts a big figure there. If I have two salesmen, one of whom sells 1,000 cars a year and the other one, 500, I would not consider the second as valuable as the first. Practically the question does not fit, because one may sell steers and the other cows and butcher's stuff. The steer salesman is generally the higher priced man of the two, not because commissions on steers are greater, nor because they are harder to sell, but because steers are more generally fat cattle and are higher priced animals. Sometimes they are harder to sell, sometimes easier. Steer buyers are more experienced and higher priced buyers than the cow buyers and that condition has to be met by a higher priced selling ability.

If I were hiring a steer salesman, I should want to know his experience, what kind of a mixer he was, his acquaintance in the country, what trade he could probably draw and other qualifications. The salary another firm might be willing to pay him would be a factor, due to the law of

supply and demand in labor. I would not be willing to pay him more than I thought he could get from another firm unless I thought he could make me money. There would be a limit to where I could go with the man; I would estimate what I thought he was worth and when I reached that point, if I could not get him, the other man would have to keep him. If I want to employ a particular salesman and the most he can get anywhere else is $4,000 a year and I think he would be worth $7,000 a year to me, I am not going to pay him $7,000 a year. I would try to get him at $4,500; if I can't, I would pay him $5,000. As to why he should not work for me at $4,500 as compared with $4,000 for someone else, he might not like me as well as he likes the man for whom he was working. That goes into the whole atmosphere of the commission business and the surroundings of the individual. He may be happy in one place and not so congenial in another and the difference might be worth $500 a year to him.

[fol. 885] Salaries of employees are determined by competition of firms for their services to a certain extent. To perhaps a greater extent they are not. Qualifications are the same no matter whom they work for, assuming that the personal element is agreeable. Competition has some influence. I think the knowledge the prospective buyer has of the prospective employee's ability, trade and personal following is the determining factor.

It does not exactly follow that if another firm also knows the salesman has this ability and following, his salary will be determined by competition between them and that he will go to the employer who is willing to pay him the best money, assuming that personal relationships are satisfactory. It is a matter of the salesman's ability to sell himself to one man for more than the other man will pay him. His trade and the ability he has to handle it after he gets it are the dominant factors. That ability and those qualifications ought to be valuable to anyone for whom he may work, providing the surroundings are satisfactory.

I stated that I had determined from an application of the Secretary's schedule that 20% of these firms would go out of business. I also said it was ambiguous in its terms and not capable of intellingent application, but in trying it out we made as good a guess as we could as to what the Secre-

tary or those who wrote the order for him meant when they wrote it. We have no way of knowing that our interpretation is the same as the Secretary's, because there are spots in the tariff which have no terminal facilities. You know neither where to commence nor where to stop and it is anybody's guess as to what it means. We have made no effort to ascertain from the Secretary what he meant by the portions that we consider ambiguous. This order as a whole is so obnoxious, dealt our people so much grief, that we did not try. I recall no other case where we have been at such variance. We have asked of the Packers and Stockyards Administration interpretation of their orders, which they have given us. I did not say the rate of $15.00 for cattle in straight cars under the selling schedule was ambiguous; I said it was unfair. I do not think that is ambiguous, I think it is unfair. (Last sentence stricken as unresponsive). I said it was impossible to determine from the schedule what rate should apply on drive-out cattle, I do not understand that we are allowed to charge anything we please on drive-out cattle, because we have been told many times that we must make no charge not specifically covered [fol. 886] by tariffs. I find nothing in the order which prohibits us from filing with the Secretary a tariff prescribing any charge we please for drive-out cattle. Inasmuch as the Secretary had signed an order purporting to regulate our tariffs, pending determination of this case, we have filed no tariffs. We are charging under Tariff No. 2. Referring to the second paragraph of the order, providing that petitioners shall not charge any rates in excess of those found by the Secretary to be just, reasonable and non-discriminatory, I do not find anything in the order prescribing any charge for services known as commissions on drive-out cattle. I suppose we could file a tariff. Inasmuch as our Schedule No. 2 was suspended and this case is pending, we have filed no new tariffs. We could file another tariff.

When Schedule No. 2 was filed I was in the hospital. I am somewhat familiar with it. I stated that the rate prescribed in the selling schedule in the first two lines under "Mixed Cars" was ambiguous as it stands. The difference between that schedule and Schedule No. 2 under the selling commission for mixed cars, is that we have a maximum whereas the Secretary's order prescribes a minimum.

Answering the question whether there is anything in the Secretary's order which authorizes us to charge more than the rate there prescribed for cattle in single deck mixed cars, the tariffs are not made in that way. The paragraph two which you have had me read from the order, which prohibits our making any charge in excess of that found by the Secretary to be just, reasonable and non-discriminatory, is not a note to the revenue section of the order, it is connected with it in no direct way so far as revenue is concerned. The charges should be set out in the revenue portion of the tariff. The tariff to be complete, should show a minimum, or at least a maximum; it shows neither and, therefore, is ambiguous and impossible of intelligent interpretation; it is not built as tariffs are built under the Interstate Commerce Law, the Packers and Stockyards Administration, or any other tariff building machinery with which I am acquainted. (Motion to strike overruled.)

The revenue section of the order gives no starting and stopping place and the paragraph 2 referred to is not connected up with the revenue section of the order. It says [fol. 887] "Charges shall not be more than," but, more than what? It says "In excess of the rate heretofore determined to be reasonable, just or non-discriminatory," but it is not determined. In the preceding paragraph where it is said that "The Secretary of Agriculture determines that the following are schedules of just and reasonable charges," it was determined, but when he attempts to set out what the charges are and comes to the tariff or revenue portion, he makes mixed loads of cattle and calves. We have no means of knowing what we are to do with the schedule of rates without consulting the order. When the order tells us that we are not to charge in excess of these rates, there is still a question as to whether they are maximum or not. The order does not say. I cannot tell what the Secretary meant. Answering the question whether there is anything in the order which permits us to charge more than $15.00 for cattle in mixed cars, I do not know whether that is what the Secretary intended or not. I do not know what the Secretary meant. The tariff is ambiguous in its terms. Another difference between this statement of the rate in our schedule and in the Secretary's order, under "Mixed Cars" in the selling schedule, is that we have a

minimum as well as a maximum. It is a fact, I presume, that we might charge less than the Secretary's schedule if we wanted to.

There is no doubt about our ability to charge less, but considerable doubt about our inclination. That is not involved in the question of ambiguity, except that we don't know what that paragraph means. We have in ours a minimum and a maximum, you have neither.

Paragraph three of the order provides for the filing by the market agencies of schedules effective January 1, 1927. Nothing in that order prohibits us from filing such schedule prescribing such minimum rates as we see fit. I presume we could have filed rates cutting our schedule in two. The ambiguity is that the Secretary's rate has no minimum and maximum, and it is out of character to suggest that we are going to cut our rates in filing a tariff which has already been cut, according to the Government's figures, $341,000 a year.

All of the services I have described which the commission firms render the shipper, cost money to render. There is no reason why they would not continue to render these services under the Secretary's order, if the rates there pre- [fol. 888] scribed covered the costs and left them a reasonable profit. I decline to specify the firms that I think will be driven out of business by the application of the Secretary's schedule, unless compelled to. That would be unfair to them. Numerous of them have told me that they would be driven out of business.

I base my opinion that if the full rates allowed by the Secretary's order were charged speculators, some of them would have to leave business, on statements made by them to me, and my general knowledge of the business. Most of them have told me what they were making, not with this or any other case in mind, but because of my intimate acquaintance with them. If we take from their profits the raise authorized by the Secretary, their profits would be wiped out and in some cases develop into a loss.

I cannot give a normal figure for the speculator's profit, or a maximum and minimum, because some days a trader might make 25¢ a hundred and on a like number of animals the next day lose 15¢ a hundred. The information they have given me from time to time is incidental—"I made so

much last year," or "I lost so much last year;" and then since this case was begun, some of the traders have told me that their profit last year was not equal to the amount of the raise and that if the raise stood they would have to go out of business. If the traders went out of business, the people who buy their stock of the traders would have to purchase it of the commission men. The effect of that on the gross income of the commission men is that where the commission man sells to the packer or the direct consumer, he gets but one commission, but where he sells seconds, he gets two; that is, some other man gets the commission for selling the second time.

I have no information other than the expressions of the traders, which leads me to believe that they will go out of business under the application of the Secretary's rates. The traders tell me that their average profit on live stock is less than one-half of one per cent of the value of the stock handled by them. If the profit is less than one-half of one per cent, it must follow that the trader's profits in buying and selling are less than if he were handling the same stock as a commission man.

Redirect examination:

The total number of head of live stock received in 1924, 1925 and 1926, whether received in cars, or driven in in [fol. 889] trucks, was as follows:

Year	Cattle	Calves	Hogs	Sheep
1924	1,758,294	103,622	3,978,288	2,844,421
1925	1,592,599	116,221	3,355,207	2,419,551
1926	1,692,058	123,011	2,647,289	2,779,761

I was not able to be at my office when the accounting began preliminary to this hearing, or at the time the Government's auditors came here to make a similar accounting, and do not know what took place as to construing the Secretary's schedule or getting a construction of it.

W. B. Tagg, Omaha: Resident of Omaha 33 years; in the live stock commission business 28 years; stockholder and manager of Tagg Brothers & Moorhead; a corporation,

one of the original plaintiffs in this case; a registered agency under the Packers and Stockyards Act. The firm started business in 1884 and witness entered it in 1899. Present stockholders are A. W. Tagg, W. B. Tagg, A. E. Anderson, M. C. Wilkerson, E. J. Wright, H. W. Anderson, Mrs. A. B. Lyman, all residents of Omaha and all active in the business except Mrs. Lyman, who is represented by her son, her husband having been a stockholder when he died and the son now having application for Exchange membership on file. The firm does a general live stock commission business, handling all species, and having a salesman for each of the different kinds. The total salesmen engaged, both owners and employes, are six.

The total service rendered the shipper in connection with that of buying, and selling cattle, is as follows: We keep him posted on market conditions; help and advise him in the selling of feeder's stock; guard his stock at the market; sort, feed, water, sell, weigh and collect for the live stock sold; pay the charges in connection with the shipment, and remit the proceeds as directed by the shippers. The percentage of gross charges to gross business of witness' firm for the year 1926, Schedule No. 2 having gone into effect March 27 of that year, was 91/100 (.0091) of one per cent. I know of no other line of business where the percentage is as low, taking into consideration the work done and the responsibilities assumed.

We guarantee the title of live stock consigned to us and re-sold. We guarantee the title to the purchaser and protect him against any claim, such as a chattel mortgage or a claim of title by someone other than our shipper. We insure ourselves against this risk. Some other firms do likewise; some of them carry their own risks.

[fol. 890] There are some necessary incidental losses in credit in handling the business. Stock is sold and weighed and supposed to be paid for the same day. We don't know until after the clearing house is closed whether he has paid or not. He might pay the next morning. Sometimes we sell to a man; he gets the stock and we never get the money. A man may fail before he gets us paid. If we sell to a buyer from the country and his check comes back, we have to go and recover the cattle and take our loss. These things don't happen so much recently, but they are an occasional source of loss, necessarily incident to the business.

We had an audit made of our business for the period of April 1, 1926 to March 31, 1927. Exhibit 118 is the result. Exhibit 118 offered and received without objection to show that the results claimed for 1925 continued through 1926.

In preparing this exhibit we took the rates charged under Schedule No. 2 which was in effect from April 1, 1926 so that it reflects the actual commissions received under that rate. We also computed the commissions that would have been received on the same business if the Secretary's order had been applied, except that we did not include the advance on seconds, but took the rate for seconds existing under Schedule No. 2. In 1926 we handled 4,446 cars, including drive-ins, truck-ins and everything reduced to car lots, and received total commissions of $87,937.93. The expense of the business was $86,196.02, leaving a profit of $1,741.91, applying salaries as we actually had them on our books.

If this business had been conducted under the Secretary's order, with the rate on seconds provided in Schedule No. 2, we would have received gross commissions of $76,823.80 and with the same expenses the business would have shown a loss of $9,372.22.

I devote all my time to the business of the firm as manager and am generally kept pretty busy. The stock is coming in in so much smaller bunches and the business is so much more complicated than it was five years ago, that I think there is just as much work in connection with it as there was ten years ago, at least.

I have seen the results of the John M. Gilchrist audit to our business for 1925, and taking the results of the Secretary's schedule as applied to it, and of the same schedule applied to our business for the year ending March 31, 1927, the effect of a continuation of the application of the Secretary's order would be that we would go out of business. [fol. 891] We could not continue in business under that order unless we either gave poorer service or cheated our customers, and I would not do either one. If the order remained in effect we would have to do business at a loss or quit.

I am familiar with the business done in the yards by traders and speculators and do business with them. The trader makes competition for the different kinds of live

stock, but especially for odds and ends. When buyers for the large packers are looking for carload lots, the trader will buy small numbers and put them together and sort them into carlots and place them with different firms to sell. Another class of traders buys feeder stock, takes it to their own pens, sorts and classifies it and sells it to countrymen or other customers. The increase in commission charges would affect more particularly the first class. That increase would materially decrease that business. A material decrease in that business would limit competition on the buying market and cause prices to go lower for the producer.

In my judgment the commission men at Omaha would not adopt the increase to the traders and speculators permitted by the Secretary's order and I think it would be a mistake to do so. I personally would not favor it. The trader would require more capital than the commission man for the same volume of business.

The bulk of live stock arriving at the market is unloaded between 4 and 8 o'clock A. M., yarded betwen 6 and 8, assorted and classified and as a rule sold before 12 o'clock and except during extraordinarily heavy runs, or on a slow market, is weighed up by 1 or 2 at the latest; the account sale are made up and and the bulk of them go out the same day and the money is in the bank going back to the country before the bank closes at 3 o'clock. I think 90 to 95 per cent of the stock is handled the day it comes in. Under the circumstances it requires expert, experienced help, both in the yards and in the office to handle the business. We must keep an organization in both yards and office, sufficient to handle a peak day's business practically all the time because we don't know at noon the day before what the run will be the next day; we don't know whether we will have two loads or twenty. We must have the ability to serve in reserve before we know whether the cattle are going to arrive in quantities to exhaust our full capacity. We have to have our organization here all the time. The volume of business varies greatly. Receipts are heavier in the winter and spring than in the summer, and receipts of [fol. 892] western cattle and sheep are heavier in the fall than in the winter. We must have experienced and capable salesmen when the business comes and we cannot leave

them off for a couple of weeks. If we did, someone else might have them in some other line of business.

Cross-examination:

The cost of the insurance we take to protect our responsibility for the title of stock sold is shown on our books. We charge losses for bad debts directly to expense at the time the loss is sustained. 1925, I would say, was a normal year as to such losses. Our losses on that account were shown in our books for 1925. Mr. Shortell said it was not a legitimate charge. (Stricken as not responsive; exception taken.)

The services we have described are costly services, and everything we had was included in the Gilchrist audit, Exhibit 118. This audit included owners' salaries as shown by the books. We have four owners credited with performing the services of salesmen—one cattle salesman, one sheep salesman, one hog salesman and one feeder buyer. We also have three employed salesmen, two for cattle and one for hogs. One of these employed salesmen sells calves and a few odds and ends and gets $250 a month. The other employed salesman is not a regular salesman, but is what you might call the assistant hog salesman at $215 a month, or $2,580 a year. The other employed cattle salesman sells cows and gets $475 a month, or $5,700 a year. The owner cattle salesman receives $6,600 a year, the owner hog salesman $6,000 and the owner sheep salesman $6,000. In 1925 their salaries were $50 a month more for each of the owners. The owner feeder buyer gets $275 a month, or $3,300 a year.

I do not know how much the cattle salesman who receives $5,700 sold during the year 1925. I hired him in July or August of last year. I do not know how much the one who draws $3,000 sold in 1925. We have three cattle men who sell cattle, one sells cows, one sells steers and one sells bulls and calves. We don't know how many cars they sell. We have so many cars of cattle, we don't know how many cars of steers and cows. I could not tell you how many cars the $3,000 salesman sold, I have no way of telling from the number of cars of stock he sells whether he is earning his salary or not. I judge it from the way he pleases our patrons. It makes some difference what income he receives from our business but the income will take care of

itself if the salesman can please the shippers. If he cannot, he is high at any price. I do not know how many cars of cattle our owner cattle salesman sold during 1925. I [fol. 893] have no idea of individual performances. We know about how many cattle the firm handles in a year and what the shippers say about the service and whether they come back or not. To know how much each individual man sells, would not be any criterion, in my judgment, as to what he was worth. It would not be the only criterion. As between two men, all other things being equal, one who sold 1,000 cars would be more valuable than one who sold 500, if they gave equal satisfaction.

I would say that our owner salesmen sell more than our employed salesmen, because the owner cattle salesman sells steers and I think we handle more steers than cows in a year. Our records would not fix how much each particular man sold, they would show how many cows and how many steers but not which particular salesman sold the steers. We keep no record of that, it is of no interest to us. As far as ascertaining the actual performance of any individual salesman over a year's time, it is mere guess work. We know that the per car cost allowed by the Secretary in his order is not correct according to our costs. We have a very good idea of what our per car cost as a unit is all the way through the year's business. We arrive at that by taking the total year's expenses and dividing that with the number of cars handled. We could determine the selling cost per car, and tell whether the figure fixed by the Secretary is right or wrong by dividing the total number of cars handled into the total of the salaries paid to all of the salesmen, including salaries allowed to owners.

When we employ salesmen it is not our practice to pay them substantially more than they could command anywhere else. As to salaries allowed owners, with seven owners in the business and five of them salesmen and all having a chance to vote on salaries, you cannot imagine any one of us letting the other get more than he is worth. We have not a man on our payroll who has not been offered more than we have ever paid them, but we have an interest in the business and we would rather work there for less salary. The owners themselves have all been offered more money to go to work for other firms.

If we were compelled to go out of business by the Secretary's order we would not be assured of a greater income by way of salary somewhere else than we are now drawing, [fol. 894] because the people who would give us a job would probably go out along with us. There would be no one to hire us. There would be a surplus of high priced salesmen.

It would be up to the men in the country to decide who would sell the cattle we now sell. I could not say whether he would take them to some other market. He might sell them at home, especially when the rates here are lower than they are at Sioux City. If the Secretary's order will allow me enough income to defray my reasonable costs and allow me a reasonable profit, I know of no reason why I should go out of business, but the Secretary's order won't do it. (The last sentence stricken as not responsive; exception.) I consider the service rendered by my firm equal to that of any other firm on the Omaha market.

The anticipated elimination of traders and speculators will cause the price to producers to go lower. Anything that lessens competition naturally has that effect. I do not think it would decrease the number of people who want to buy the class of stock that dealers handle, nor increase the number who have that class of stock to sell. It would decrease the number of buyers operating on the market. The more buyers, the more competition. Two buyers buying fifty head of cattle each, makes more competition than one man buying a hundred.

The price to the producer would be interfered with because a good many times when you have odds and ends left, and packers have filled their orders and left, a yard trader or buyer will come along and you can sell them to him, clean them up that day. He will gather them together, carry them over and take a chance on selling them the next day to the same buyer who would not buy them today. The shipper has gotten his money and gone home. I do not contend that the increase would drive all the traders off the market. How many would be a good deal of a guess; I would say one-third but that might vary.

The ratio of income from trader's business to gross income from all sources varies a great deal. It was around one per cent of our business in 1925. My idea is that if

we raise the rate as directed by the Secretary it would cut the business in two so that there would be only about the same amount of revenue when we got through, but we would lose the competition in the yards.

If possibly one-third of the traders went out of business, I think the remaining two-thirds would furnish us only [fol. 895] half of the business that the present traders furnish us, which would result in leaving the income from traders' commissions about what it is now.

We have to have an organization every day to handle what you might call a peak load. I do not mean by that the largest amount of business we might be expected to handle, but a good substantial amount. So far as our firm is concerned, this entire cost is included in the audits, with the exceptions which have been noted here, such as the extra memberships.

I have no idea how many cars of cattle I would expect the $3,000 a year salesman to sell in a year under normal market conditions. We expect him to sell what we get out there in his particular class. I do not say that we give no consideration to the number of cars of cattle that a man will probably sell. This man has been with us for 15 years and I have no idea how many cars he sells per year.

Redirect examination:

In hiring a cattle salesman, it is absolutely impossible to calculate in advance how many cars he is going to sell the first year we have him. That is not the proper way of ascertaining what it is going to cost us and his value cannot be calculated on any such basis. I do not think that it is possible to do that in such a business as we have. I do not think there is any way except to take the actual figures showing the costs of conducting the business, to find out what it costs to run the whole business when carefully and economically managed.

Recross-examination:

Our firm is managed as efficiently as most of the Omaha firms. As to whether all of the firms at Omaha are managed with the same degree of efficiency, I will say that they are

all doing the best they can so far as I know, trying to give good honest service.

Redirect examination:

I am familiar with the practice of commission men of loaning money to shippers or feeders of live stock and paying drafts to buyers or shippers. That practice was general a few years ago but is not now. Its purpose was to increase the volume of business of the commission firm. It was not done to make money on interest. These loans were practically all rediscounted, sometimes with some margin of profit. It was not the practice of the commission men to [fol. 896] get that small margin. It had the effect of increasing the commission business. It had a very disastrous effect on the commission firms that indulged in it and put a great many out of business. There have been cases of firms having a large volume of business, with a large profit in the commission business alone, but the losses from these loans would wipe it out. It used to be quite a custom to pay drafts in advance of the shipments; that is, where the buyer in the country was short of money, he would make a draft on the commission firm and use the money during the time he was assembling the shipment, and he would be repaid when the shipment was sold; with no mortgage and no agreement of the shipper that he would ship the live stock and that the proceeds would equal the draft. There have been a good many losses from that practice. It had the tendency to increase the volume of business and commissions and might show a profit on the commission business alone, but the losses from the loaning would wipe it out. I am rather prejudiced against the practice as the result of personal experience. We have lost more money making loans than we will ever make in the commission business if we live to be 75 years old. That has been the experience of a good many in that business.

Recross-examination:

This practice is not general now, we have not made a loan for four years, but we still have some debts carried as bills receivable on the books, resulting from loans made in

previous years. That represents part of the assets of the commission firm. I do not think we made any charges off in 1925. Some of them have been charged off since. The Secretary's audit does not represent the money that I am tied up on myself, personally. It does cover the cost in the operation of the business, but I was personally liable on those loans made to get business for the company, and it helped to promote the commission firm's business, and when the loans went bad, I have had to take them up and pay them personally. (Latter portion of answer stricken.) The Secretary's audit does not cover my personal investments in this direction, separate from that of the firm. There is no investment of the firm which is not covered by the Secretary's audit; there are investments as an individual which are not. (Defendant's motion to strike as not responsive overruled; exception.)

There is no way of telling, either accurately or approxi-
[fol. 897] vidually over a year's time. I calculate that our owner salesmen sold more than our employed salesmen, because they sell steers and the hired salesmen sell cows and heifers, and as a rule there are more steers on the market than cows and heifers. I know of no reason why it should be more difficult to determine the value of a live stock salesman's services than those of another individual rendering service of high character, such as a railroad president.

I participated in the formulation of Tariff No. 2. When I started in the live stock commission business 28 years ago, I was able to form an idea as to whether I was going to be able to pay expenses, because I bought an interest in an established firm with my older brother.

The commission rate charged for the sale of live stock is a negligible factor in the cost of producing live stock by the grower. I think they would have to get out of reason before they would appreciably affect the producer's costs. I would say that if the rates ever got over 1-1½% of the value of the product, that they would be getting up dangerously high. It would take that much difference to appreciably affect the costs to the grower; that would be at least a fifty per cent increase of Schedule No. 2. If the Government did not have authority to prevent increases in rates, then

the fixing by the commission men by agreement of rate increases, up to the point where it would prevent the flow of live stock on the market, (Objection as not proper cross-examination overruled; exception) would be prevented by the competition of independent firms. Any time we get the rate higher than a fair rate, the independent firms will take the business away from us. That will happen any time our rates are unfair or too high. There have been 6 or 8 independents on the market within my knowledge and my 27 years experience.

Redirect examination:

There has never been a full year when our rate schedule has exceeded one per cent of the value of the product. There may have been short periods when values were very low when it ran a little over, but at normal value, rates have never exceeded one per cent. In addition to the possibility of independent firms coming in and taking our business away if we made the rates excessive, there are other complications. Leaving out the Government regulation, the relation between commission man and shipper is taken into consideration in fixing rates, and the effect on the mind of the [fol. 898] shipper and his attitude toward us. In addition, a man can sell at home. Many shippers are selling direct now. A man does not have to go away from home to ship to market.

Recross-examination:

I did not say that the rate would go up to one and a half per cent before it would affect the flow, I said the cost of production. There is a big difference between the cost of production and where a man will ship to.

Redirect examination:

Our rates would not affect the cost of production of those who do not ship to us. Any time our rates get too high, or higher than a fair rate, the shipper can sell at home or ship direct.

Recross-examination:

I did not mean that a small fluctuation of rates will affect the flow of live stock to the market. I mean if we get our

rates higher than a fair rate. I think public sentiment has more to do with that than anything else. It is a question of whether he thinks it is fair or not. I do not think that if we reduced our rate public sentiment would be so approving that they would ship more live stock to our market. Chicago and Sioux City are higher than Schedule No. 2, and still more of our customers have gone there in the past year than for some time. We won't admit that we are not rendering better service in proportion to our rates than Sioux City.

WILL H. WOOD, Omaha: Resident of Omaha 30 years; in the live stock commission business 43 years; 30 years at the Omaha market. Member of Wood-Oswald Company, one of the original petitioners herein, a partnership composed of witness and H. J. Oswald, which was organized January 1, 1913; registered market agency, handling cattle, hogs and sheep and having engaged two owner cattle salesmen, one assistant cattle salesman, one hog salesman and a sheep salesman employed on a half commission basis.

Witness sells all species of cattle and is also manager of the firm. The first six months of the year is usually our light period. The last four months of the year I arise at 4:45 A. M., have my breakfast on the table a little after 5, am in my office by 5:30, am on my horse 6 to 10 hours a day and leave my office at 9 to 11 P. M. In the fall the selling of beef animals stops at 3 P. M.; feeder cattle can be sold at any time as long as it is light enough to see them. The first 6 months of the year I spend in the office from noon or a little thereafter until 5 or 6 P. M.; in the fall I many nights do not go to my office until it is too dark to see to weigh live stock and then have my office work to do at night. Mr. Oswald follows in the same line and sells cattle of all kinds.

I have had my attention called to the details of the audit made by the Gilchrist firm showing the results in 1925 of applying the Secretary's rates to our business. If the [fol. 899] Secretary's order should stand, it would absolutely destroy my entire organization and the firm of Wood-Oswald Company as it stands at present would go out of business.

We have very little business with traders and speculators. I am familiar with that business. There is one class of speculators which deals in stock cattle or hogs; another in feeder stock or odds and ends. Their primary function is to clean up each day's business so that it will not run into another day's. After the packer buyers have left the yards, the commission man is thereby enabled to dispose of these odd animals and clean up the day's business and be ready for the next day. If the Secretary's order became effective, knowing that many of these traders are working on a very narrow margin, and the costs they have to pay, which includes a clearance charge besides their commission charge, and many of them working on short capital, I believe that they would necessarily have to go out of business also. That might not make any difference in the amount of stock handled on the market, but it would make a difference in the buying power, reducing competition and necessarily costing the producer a loss.

Cross-examination:

I do not know of any of these services, the cost of which is not included in the audit of our business, except the services that we render without cost to the producer. There are reasons why it costs us more than the normal firm for advertising. The greater portion of our business is in cattle and it is necessary to extend our acquaintance. Every year I spend a month visiting our patrons in the west and my partner does likewise. We attend all stock meetings as a rule, and our clientage is of such a nature that it demands very strong posting on the market through the Daily Journal-Stockman, market letters, special letters and other means of advertising. Our advertising costs us more than some other firms because at least fifty per cent of our business comes from west of the middle of Nebraska and from there to the Pacific Coast. We have to travel farther and have to do a lot of things other firms do not do. They are closer to their clients. We have lots of clients close, but fully fifty per cent are in the west. I do not know whether there is any element of this advertising which would not be equally advantageous to other firms handling the same line of business. I started this 25 or 30 years ago. Other [fol. 900] firms have not seen fit to follow but if they did they would have had the same expenses that I do.

I admit no superior on the Omaha market in service rendered shippers. I was there before John Clay & Company were. I do not think there is anybody in the live stock commission business in the United States who could tell how many live stock a salesman at a given salary should be expected to sell in a year's time, in order to earn his salary. The question cannot be answered. There is no way of telling. There are mixed cars, straight cars, and so on, and the sales cannot be attached to any one man. We bring our employed salesmen up in our own ranks. I know of no way to calculate whether they are going to be able to earn their salaries and make us profit. The matter of hiring cattle or hog salesmen is a pure gamble and there is no way to fix the salary of a salesman.

R. M. LAVERTY, Omaha: Resident of Omaha 31 years; 31 years in the live stock commission business; sole owner of Laverty Brothers, a registered market agency; one of the original petitioners herein.

I have noted the Gilchrist report as to the effect of the application of the Secretary's rates to my business in 1925. In addition I have made up a statement of the effect of it on my business from April 1, 1926 to April 1, 1927. Without reference to the figures, I think the volume of our business was a little larger in 1926 and the first five months of 1927 than in 1925. The volume in the yards was smaller. In 1925 we handled 2,134 cars; during the 12 months beginning April 1, 1926, we handled 2,295 cars. Between these two periods, I added to my organization a man who was doing an independent business through my firm and is now an employe, and any following he might have is coming to my office.

The total receipts for commissions under Schedule No. 2 from April 1, 1926 to March 31, 1927, were $39,606.37. I draw no salary. My total expense was $32,981.82, leaving as my compensation a profit of $6,624.55. During this period I was manager and acted as hog salesman. I spent the entire forenoon in the yards selling and managed the office in the afternoon, generally until 5 or 6. For the last 30 years I have spent no less than 10 hours a day at the office, part of the time as salesman and the balance as manager

[fol. 901] of the office. During the same period, under the Secretary's order, our gross commissions would have been $34,748.45, and deducting expenses, my compensation for the services I have described and as a result of my 30 years of experience in the business, would have been $1,766.-63. That is not adequate compensation for my time, services and experience and I certainly could not continue in business on that basis. I have no other business besides the live stock commission business and no other occupation that I could turn to. I am fifty years old and if I can continue to receive adequate compensation, I can continue in this business for some time. I was formerly an expert court reporter before I went into the live stock business, but I could not take that up now.

In making up the expenses in this computation, we applied the rent actually paid. We did not begin paying the increased rent until July 1, 1926, so that if we had been paying during that period the same rent we are paying now the expenses would have been greater. Our rent in the new building is twice as much as in the old. We have the same space exactly as we had before. That space was absolutely necessary. If we applied the increased rental to this $1,766.63, it would reduce it by the difference in rent for the months of April, May and June. We are now paying $137.50 a month; we were paying $70 in the old building.

Exhibit 119 is the statement I have been referring to and is correct.

Received without objection.

We have two cattle salesmen, each drawing $4,800 per year. Both of them have been with me for 17 years. They are competent men and worth what I pay them. We also hired a hog salesman in the truck-out division which we did not have to do until just before the yard company built the exchange building, when they built a new truck division and all of the truck-in hogs have to be handled there. Formerly we took them into the regular hog division and one man could handle them all, but now we have to have a special salesman for that work. That means more expense and is absolutely necessary to carry on our business.

We do some business in re-sales or seconds; not a great volume. I am familiar with that business and it is a valu-

[fol. 902] able adjunct to the market. If the rate to traders and speculators were increased I doubt very much if many of the traders could continue in business. They do business on a very narrow margin. What we call the regular speculators simply buy stock and re-sell it again. Our buyers buy a certain amount of stock to fill their orders and they get stocked up and have to re-sell the balance. It is on the sale of the balance that this half rate applies. The existence of this business makes a better market. There is not any argument about that at all. Any time an order buyer comes into the yards, whether he has an order or not, he stimulates the market. The packers don't know whether he has an order or not, but the fact he is there makes a better market and increases competition.

I am familiar with the practice which has sometimes existed in the yards of providing loans for cattle man, either by loaning to them or by re-discounting their paper. We used to loan a good deal ourselves until we had such disastrous results. It increases the volume of shipments very materially, and also the volume of commissions. The resulting commission business might show a substantial profit. On the other side of the ledger our experience has been that if firms continue in this business very long, they will have very severe losses so that, while a commission business itself might show a large profit, the whole business of the firm making such loans might result in a loss. If a man does business on his own money he is not going to take as many chances as he does if he does business on my money. I have shown no such losses for 1925 and 1926. I do not make loans at all.

The practice of paying drafts against shipments is still quite common, I think. It is done by permitting the shipper to draw a draft ahead of the bill of lading before the live stock arrives. It is merely a method of loaning him money for the purpose of permitting him to make his shipment. It is simply an indirect way of loaning to a buyer instead of loaning to the live stock producer. Taking into account the losses which follow the practice of loaning money, they might wipe out the profit. The tendency now is not to follow either of these practices, but to confine the business strictly to the commission business. In my judgment that is the better practice. I would not loan money

on shipments or pay drafts ahead of shipments under any circumstances.

[fol. 903] Cross-examination:

The volume of our business was a little larger for the period 1926-1927 than in 1925. So was our total income. Exhibit 105, showing a net profit to my firm of $4,877.41 in 1925 after deducting actual expense from the hypothetical income that the Secretary's order would produce, including the allowance of $5,000 and $4,000 salaries for owner and salesmen, is correct so far as I know. Exhibit 119 shows a total profit for the 1926-1927 period of only $1,766.63 without deducting anything for owners' salaries. I can explain the discrepancy very easily. Since the opening of the new truck division in the hog yard, we have to have a new hog salesman in the truck division, and twice as much rent as formerly. Our increased volume of business is accounted for by the fact that we took over one member of a firm who was doing business through our house at that time and who brought a considerable volume of business with him. I have to pay him a salary for working for me. Our salary schedule, Exhibit 119, shows one hog salesman, $2,760. He is the only one shown because I am a hog salesman and was in 1925. I sold all the hogs at that time. My 1925 audit shows one hog salesman at a salary of $2,795. He is the man who is selling hogs on the truck division now, but in 1925 he should have been classed as a yard man. He and I did all the work done there and sometimes he would sell the hogs. He sold the hogs for me when I happened to be away. Now he is classed as a hog salesman.

The $35 excess in his salary for 1925 is probably a bonus at Christmas or something of that kind because he is supposed to be getting the same now as he did then. Since I took him into the service as a hog salesman, I had to replace him with a yard man. His salary is not itemized on Exhibit 119 but is included in the other expenses. Expenses have increased since 1925 out of proportion to the increase in my business, for the reasons mentioned. The Stock Yards Company, in April or May, 1926, put in a new rule requiring us to sell truck-in hogs in the truck division, whereas we used to be able to take them down to the other division and sell them. The Secretary's schedule increases the rate on

drive-in hogs over that shown in Schedule No. 2. The business which has increased the expenses is in driven-in hogs. In figuring up our compensation under the Secretary's rates, we included these figures. Our profits on the truck-in business would be greater under the Secretary's order than under Schedule No. 2.

[fol. 904] Assuming that conditions should continue so as to give me the profit of $4,877.41 shown on Exhibit 105, after deducting owners' salaries, there is no question but that if I were assured of such salary and profit I would not have to go out of business, but the trouble is, I cannot do that now. I do not contend that the net profit of $3,414.70 shown in the last column of Exhibit 105, after deducting actual expenses, hypothetical salaries of $5,000 and $4,000 and one-half of the commissions allowed on traders' business, would be so small as to drive me out of business. I do not admit that that is the fair value of my services but I would not have to go out of business. Of course, conditions are different from one year to another.

The elimination of some of the traders by decreasing the buying power of the market might affect the results to the producer. It might affect the volume of live stock coming on the market for sale but not to any considerable extent. The only way it would affect it would be that our market would be lower. Our commissions run proportionately only to volume; hence this decrease in buying power with the resulting decreased profits to the producer would not appreciably affect our commissions, except by diverting shipments to other markets.

Lessened competition would be much more of a factor in diverting shipments than any lessened commission, because there is not one shipper out of a thousand knows what he is being charged, but they do know when the market is lower than the others. I do not know the proportion the gross income from dealers' business handled by our firm bears to my gross income. The mere presence of more people on the market tends to bolster up prices. The packer seeing these people coming on the market does not get scared, but he does start to guessing. When an order buyer comes into the yards, the packer buyer don't know whether he has an order for one or fifty cars and a good many times they do buy fifty cars. If there are no speculator buyers there they

know they are going to buy it all at their own price; when there are competitive buyers, they don't know what they are going to buy, or how much, and it stimulates the market. The Government's audits show that our income from trader and speculator sales in 1925 was $3,900 as against a total income of over $34,000, or about twelve per cent.

My judgment is that the application of the Secretary's [fol. 905] order would drive out of business at least 25% of the traders and speculators and the others would probably do a diminished volume of business. I would say the volume of trader and speculator business would not be over half of what it is now. I did not say that the mere presence of these men in the yards is the only thing. That is one thing. Of course, if they came on the market every day and never had an order, it would not work. The elimination of half the trader and speculator volume, or four per cent of the total would so seriously affect the price of stock coming on the market that producers would probably take their stock to other markets in considerable quantities. My experience has all been in the hog yards, but I would say so far as the hog yard is concerned, it might easily do that.

I have no way of knowing whether the trader's margin of profit is smaller than the producer's margin. We are trying to make the producer's margin larger; that is why we are trying to get a good market for him. Of course, if the producer's margin of profit is cut out, it would discourage him in raising live stock and in sending it to the market. But I have no idea whether the effect on the trader would be more serious than it would on the producer. The producers do business on an immense scale and the trader on a small scale, it is not a fair comparison. There are producers of different sizes all along the line. We used to loan money in the cattle business. We don't do it now; it is out of the picture. We did lose a lot of money years ago when we did it.

I believe that our service is equal to that of any commission man on the Omaha market. I do not think a commission firm could be run any more economically or efficiently than ours is. We have no advantage over anybody so far as conditions are concerned, except long experience and the efficiency with which we perform our services. I know no reason why a firm could not operate just as effi-

ciently as we if they have been in business as long and built up a clientele as we have. If they were starting business, their advertising expenses would be greater; and the expense of getting business might be much higher, depending on seasonable and territorial conditions. This is a seasonable and territorial business. For example, we have business in Hall County, Nebraska. Last year there was a [fol. 906] drouth in Hall County and we did not get any business from there. If we had to go into some territory where we are not known, like a new firm, it would cost us more to get that business than from the people who actually ship to us. These fluctuations take place with respect to all of the other firms. I would not say that the only conditions which might differ between us and other firms is that a new firm starting out would need and have to pay for more advertising. Selling ability varies. It is not quantity, but quality of service that makes money for our shippers. We never know when we go into the yards whether we are going to have ten or three cars of cattle to sell. No firm on the market knows anything about their next year's business. You cannot tell that. It is only by giving service and satisfying customers and getting them to come back that we keep our business and we have no way of finding out what our business is going to be. We don't know whether our business will increase or decrease next year. We have no way of accurately knowing whether the business which may come to us, when the Secretary's order is applied, will result in loss or gain. The only way we can judge the future is by the past, and we cannot tell that way to a certainty. The fluctuating character of the business would mean more to the commission men than to the Stock Yards.

Shippers do not always ship back to the same firm. I have shippers who have been my customers ever since I have been in business. We have others that shop around. There are some whom nobody can satisfy; they are always shopping around. The majority stick to the same firms though if they get good service. The same men do not ship or feed every year. One year we will have an entirely different clientage than we do another year, because a different bunch of cattle will be fed, and different feeders. They come to us one year and to someone else another. If they strike a bad year, they wait for a good one.

Redirect examination:

As a whole, my services have been satisfactory to my shippers. I could not say what proportion come back year after year, but a considerable portion do. We have to have both regular and transient shippers to make up the necessary volume. It is only the regular shippers that make us money. If we got only the transients we could not stay in business. I have not heard a complaint from any of my shippers on rates for so long that I do not know when it happened. So far as I know our shippers do not take any [fol. 907] interest in these efforts of the Secretary to reduce the rates, if we give them good service that is all they ask. Everything that Mr. Stryker said was in accordance with my views.

Recross-examination:

We did not canvass opinions of our shippers before deciding on Tariff No. 2. I do not think there is one shipper in a thousand that would know the difference between Schedules No. 1 and No. 2. No attempt was made to give the shippers information as to the desirability of an increase in rates.

Redirect examination:

My commissions amount to 92/100 of one per cent of total receipts. From hearsay I know that commissions charged on other sales in Omaha, such as real estate, grain and farm produce are very much higher. None of the commissions charged for the exchange of real estate, or grain at the Omaha Grain Exchange, or produce at the Omaha produce markets, are anywhere near as low as our percentages under the present schedule No. 2.

Recross-examination:

I could not say how the proportion of our commissions to value of goods sold, compares with that charged by bond brokers on the sale of bonds. I do not know anything about the bond business. I know quite a little about the real estate business. I have handled a good deal of property in my life. Of course, our commissions are smaller than those

charged for the sale of automobiles. I understand they get about 20% for selling automobiles.

R. W. Hanley, Omaha: Resident of Omaha since 1904; hog speculator on the Omaha market for about 8 years; registered market agency. I know the schedule of commissions charged by petitioners. I patronize them every day. They sell hogs for me, sometimes in the country and sometimes in the yards. They charge me $7 per car, which I believe is half the rate for incoming business. If that rate were increased to $12 a car, I would quit business. It would be too much for selling my hogs and I could not afford to pay it anyhow. That would take all the profits of my business. I have no particular margin; I buy as cheap and sell as high as I can. This year the other fellow has had the margin. I fill orders as well as buying for speculation. In the course of filling orders I sometimes have stock left over to sell. That is the only way you can fill any order; buy them as they come, fill your order with them and sell the balance.

[fol. 908] I also buy hogs for speculation. The increase in commission rates authorized by the Secretary's order would put all of the traders out of business eventually. I don't know how long it would take, it just depends on how much money they have and how long they want to hang on.

Cross-examination:

Ninety-five per cent of my business is transacted through commission men. They sell for me to packers, shippers or speculators, the highest bidder no matter who he is. These purchasers do not differ in character from the purchasers who buy the hogs that are consigned to them by shippers, the same set of buyers buy all the hogs in the yards. Every packer has a certain number of buyers who buy in different denominations, and I have a buyer too, all these buyers are there every day. These buyers buy from commission firms, they do not buy from me, not very much, because they want to discourage the speculators all they can. We create competition and make it harder for them to buy hogs.

Everybody fills stock all they can before selling. Commission men do and the speculator does, of course. There

is no protest against speculator stuff because of this fill. You cannot look at a hog and tell how full it is. I do not believe you could by its stomach; I have been there about 20 years and I cannot tell anything about filling a hog. I wish I could. I cannot tell you whether the fill makes meat as soon as it gets into the animal.

The only reason I know of why I cannot sell direct what I sell through the commission man is the prejudice against the speculator. I am only stating what I think. I have tried a lot of times to find out but never have. Eventually, of course, the packers get all of the hogs. It doesn't make any difference whom they buy them of in the first place. If there is any profit in my operations it is the difference between what I pay and what I sell for. The same class of hogs I sell do not bring any higher price to the packers or any other purchaser than they would if sold to somebody else; but after I get the hogs I change them around a lot. The hogs a commission man gets, he must sell that way. But when I get them I mix them all up and sort them out and put the best ones together and take the poor looking ones out and keep feeding them and making them look better than they do when I receive them and in that way I have better looking hogs to sell. I put the best ones together and sell them in separate bunches and I take care of them [fol. 909] so that each bunch is getting to look better all the time. The commission men cannot do that because they cannot mix different customer's hogs. They must sell them the way they are shipped in. They can sell the hogs belonging to two different men to the same customer but they cannot mix different men's hogs.

Redirect examination:

It takes a pretty shrewd buyer to see a pen ful- of hogs at one time, I cannot and neither can anybody else. I have tried very hard to look at them too, because every time I make a mistake, it costs me money; I have to pay for my mistakes.

Recross-examination:

A commission man could put the off color hogs in a pen if he wanted to.

Redirect examination:

A commission man cannot mix the shipments from two different shippers in one lot. No one can do that until they own the two lots, except the owners.

Recross-examination:

The commission man does not have to sell all the hogs belonging to one man to the same person, but he cannot mix the hogs. Each shipper's hogs must be kept separate from anything else, but if I buy them I can run them all together, sort them into different lots of the same color and they will sell better on account of their appearance. But the commission man cannot mix two men's hogs. The mixing of off color hogs is not one of the reasons for the prejudice of buyers against speculators. The reason for that is the competition. If we stayed out of the market the buyers there would not have so much competition. I do not know anything about whether the buyers do not mind getting in these undergrade hogs that they don't see. What a man don't know won't hurt him, that's a cinch.

H. S. Lyle, Omaha: Resident of Omaha since 1904 or 1905; hog speculator for the past five and a half years; prior to that hog buyer for Armour for about 12 years. I try to buy hogs as cheap and sell them as high as I can. I buy from the commission men. As such buyer I am in competition with the buyers from the packing houses. I don't buy hogs for slaughter, I always resell on the Omaha market. I have only shipped two loads of hogs since I have been speculating. I sell the same day if possible. I re-sell them in different lots. The purpose of that is to shape them up so they will look and sell better. I sell to the commission firms. I pay $7 a car. If that were in- [fol. 910] creased to $12, I could not continue to operate. The increase would be more than my profit for last year. $5.00 a car would be about the same as what I made last year. This increase would eventually put all the speculators out of business. If I cannot make it, I do not believe the rest of them could either.

Cross-examination:

When I say I am in competition with the packers, I do not mean that if I did not bid quite so high as I do, the packers would buy through the Stock Exchange. We are on the market as soon as it opens. The packers get their orders from Chicago, usually it is from a half hour to an hour later. The speculator is there to get his hogs early, if he can get a salesman to sell them to him. He has to get his hogs early and get them sorted and arranged for the market when the buyer comes out. The packer's salesmen bid on them at 8 o'clock A. M. when the market opens. Naturally we have to bid more then if we get them. It is purely speculation. If we did not bid more than the packers, they would take the hogs. In that case there would probably be no sorting. They would take them to the packing house and slaughter them. In the long run the sorting is not a service to the packers, it does not make the hogs any more valuable to them, because they buy them all. The advantage in the sorting is the effect Mr. Hanley described. You may get away with a few cheaper ones. We have to pay less for them than we sell them for to the packers if we are going to make any profit. There are different things that govern the market. Increased competition is one. I might buy a load of hogs at 8 o'clock and the outside shippers may get orders for a load in the next thirty minutes and it might force the market up 25 to 40 cents a hundred on the packer inside of an hour and if it does, I make a profit. It is not necessarily my competition that makes that increase in prices. That comes from conditions transpiring before the purchase. If you take 25 or more speculators, it would have some bearing on the market. We sell most of our hogs to the packers, some to the shippers; but we buy in competition with the packers, and pay less for them than we sell them for to the packers. My bid serves to keep the price up merely because I am another buyer. I try to keep the price down as low as possible.

Redirect examination:

If I were not there, the packer would get the hogs cheaper than the shipper now gets them. He would because of lack of competition.

[fol. 911] Recross-examination:

They don't know, when I buy these hogs, what I am going to do with them. I have bought 8 or 10 loads in a day. They did not know but what I was going to ship them to another market. I don't sell the hogs myself; I put them in the commission firms' hands and let them sell them, or I might ship them; I don't, but I might, and it makes that much competition on the market; there are other speculators there too.

Defendants introduced evidence as follows:

RICHARD S. SHORTELL, Los Angeles, California; Senior accountant in the Department of Agriculture; accountant 20 years, certified 6 years. I am familiar with the conclusions in the order of the Secretary in Docket No. 143, which is the subject of the plaintiffs' petition herein and the maximum rates prescribed therein for use on the Omaha live stock market. At the direction of the Secretary, I made or caused to be made, an audit of the business of petitioners for the purpose of ascertaining the income which would be produced from their business in the year 1925 if they had operated under his order. Exhibit 124 shows the net cars handled by petitioners in 1925, reducing drive-ins, truck-ins and dealer and speculator sales and purchases to net cars. The audit was taken from the account of sales for each firm with the exception of two firms in which we had to refer to our original papers; the books and records not being available on the second audit.

Exhibit 125 shows the total income from selling, applying the commissions as originally adopted and accepted in Docket 143, and the commissions for the same period applying the Secretary's tariff, taken from the account of sales, except in the cases mentioned. The total gross income applying the Secretary's tariff as shown by Exhibit 125, is $1,992,663.70. The figure shown in plaintiffs' Exhibit 105 is $1,983,433.42, a difference of $9,430.28, or 47/100 of one per cent of the total.

The total appearing in Exhibit 125, includes the three firms which did not have their account sales available. The figures in red in Exhibit 125 represent the reduction in the

commissions of the particular firms, applying the Secretary's tariff, as compared with what they actually received under the former tariff. The figures in black represent in-
[fol. 912] creases in the gross income, applying to the Secretary's tariff. The figures in red at the bottom indicate the total decrease, taking into account this increase. Exhibits 124 and 125 received without objection.

It was agreed that the audit made by the witness Shortell, resulting in the data contained in Exhibits 124 and 125, was made during the present year and during the pendency of this suit, so far as the second and third columns are concerned. The data contained in the first column of figures in Exhibit 124 was obtained from an audit made prior to the hearing before the Secretary in Docket 143; but the decreases in petitioners' commissions resulting from the application of the Secretary's order as shown by the second column of Exhibit 125, and therefore the actual commissions that would have been received in 1925 by the petitioners, as shown in the third column, were obtained by the audit made during the pendency of this suit and were not part of the audit made at and prior to the hearing before the Secretary.

[fol. 913] Defendants offered in evidence Exhibit 126, being the deposition of WILLIAM E. REED, which deposition is as follows (examined in chief by petitioners' counsel):

Resident of Omaha; manager for John Clay & Company, live stock commission men; registered market agency since the Packers and Stockyards Act first took effect. The firm has done business at Omaha since September, 1887, first under the name of Clay, Robinson & Company. Its headquarters are in Chicago and it operates at East Buffalo, Chicago, South St. Paul, Sioux City, South St. Joe, Kansas City, East St. Louis, Denver, Ogden and Fort Worth. It is a copartnership now composed of John Clay, F. H. Connor, C. A. Kleenan, Alan F. Wilson, and Charles G. Smith. I manage the Omaha office and have charge of all the details of the Omaha business, whose accounts are kept at Omaha. The firm buys and sells cattle and hogs and sheep on commission. It also loans money but not as an agency, the loans being made for our financial offices and we make no profit therefrom.

We operated under Omaha Schedule No. 1 until Schedule No. 2 took effect and are now operating under the latter. We received a copy of the Secretary's order of November 19, 1926, and since the date when it would have become [fol. 914] effective have caused a separate account to be kept of the proceeds which we would have received under that order if it had been in effect. We have made the collections as per Schedule No. 2, but have taken credit only for the commisions named in the Secretary's order, placing the difference in the suspense account. We also allowed a reserve to account for the difference between Nos. 1 and 2. These accounts enable us to tell what are the results of applying the Secretary's order to our business since February 1, 1927. Applying the Secretary's order, we have been having losses every month. Assuming that the Secretary's order should go into effect and remain in effect so that we actually complied with it in our business, the effect of the application of the order upon our business in Omaha would be that we would either have to quit or operate at a loss, or cut our expenses to meet it, which does not seem possible. It would not be possible to operate efficiently and cut our expenses sufficiently to come within the revenue that we would receive, and leave any profit.

I have been managing some branch of our business for nearly 30 years. It has been part of my duties to employ salesmen. In our business, and considering the volume we have handled for the past two or three yars, we cannot employ a salesman who has no interest in the business except his salary, who will handle the business satisfactorily, for less than $6,000 and we have been paying $7,500 and even above that. We are not noted as a high salaried office. Other firms pay more than we do.

If the portion of the Secretary's order took effect which provides for charging traders the full commission charged shippers, I think it would have a very adverse influence upon the traders and I rather imagine it would cut the volume away down, but that is not the serious part. Their operation means a good deal to the buying power in the yards. The more buyers we have, the better market we have, and if we shut them off it would have a serious effect on the market. I believe in doing all we can to help out the buying power. We have traders who deal wholly in

what are termed stocks and feeders; cattle bought on the market are sorted and sold to the firms; others are purely speculators who buy cattle and re-sell, depending on the advance in price for their profit. Smaller operators deal in specialties, like cows. As a practical matter, we would hesitate to avail ourselves of the permission contained in the Secretary's order and actually increase that rate to [fol. 915] the full commission unless necessary under the rules of the Exchange, or the laws laid down for us. We would not favor making the increase. We would be in favor of continuing the half rate even though it increased our losses. We have felt in our office that it meant something to the market to help these fellows.

Last year the ratio of gross commissions received by us to the total volume of the proceeds of purchases and sales was .85 of one per cent. It has been up to one per cent only one year since 1912; that was 1925 under Tariff No. 1. The firm of John Clay & Company at Omaha cannot make any serious reduction in its expenses without curtailing the efficiency of the service rendered to our customers.

Cross-examination:

We conclude that the Secretary's schedule, if applied, would compel us to operate at a loss by subtracting from the gross income which would be produced by the Secretary's schedule, the actual cost at which we had been operating. I believe the conditions under which we operate are typical of those prevailing at Omaha. It costs us more to do our business in proportion to the volume than the usual run of firms. There is a good reason why it costs us more, because all our men are salaried men and the larger the firm the smaller the percentage of profit; that applies to every business. The unit expense of doing business does not always increase with the size of the firm, but the policy and the service and all that are more expensive. When I say "profit" I mean unit profit. If that is true, it follows that if the unit cost of our business *is* increasing, the unit cost of the large firm is larger for the large firm always, the same as it costs a large bank more to do business, they have a good many more demands upon them. I would say it costs more to do business per dollar; our expenses are higher. I do not think that is generally contrary to the

usual principle, for a service organization. The large firm has to do more and does do more and naturally it costs more. We cannot run our business like some of the smaller firms. We are one of the largest firms at Omaha. It is more expensive for us to render the service that we do render. In some particulars we are rendering service that the balance of the commission firms do not render. Some [fol. 916] other firms may be rendering some service that we are not, but I do not think so. The larger the firm, the closer they have to look after their business. I will say that the expense of a large firm in proportion to the size of the business it handles, is larger than that of a small one. I think that is true as a general business proposition. The cost of the service a big firm gives is greater. If you measure the services given you will find that it costs them more, but by a reasonable figure, their profits may be more. It costs us more and our profits are less than a small firm, our unit profits in proportion to the size of the business.

We handle six to nine thousand cars of live stock a year. In 1926 we handled approximately 6,800; between 3,000 and 4,000 cattle; last year was a poor cattle year. Assuming that there are 8 firms at Omaha handling over 3,500 cars of live stock a year, I am not sufficiently well acquainted with them to say whether it is more expensive for us to operate than the balance of those firms in proportion to the size of our business. I think we do more extensive advertising. Part of what we refer to as advertising is a very large service to the customer, such as the publishing and distribution of information on the livestock market through the Journal-Stockman, and sundry and divers newspapers. All of this market information is usually published in the newspapers and by the Department of Agriculture and given to the press every day so that in giving them this market paper we are giving them something which they might obtain through their daily paper.

It is impossible to obtain a salesman at Omaha for less than $6,000 a year where he handles a volume of business. It is rather an unusual question to ask what volume a man drawing that salary should handle. I would say a firm handling over 3,000 cars would pay or would have to pay, $6,000 or from there on up. I think that we could get a salesman for $6,000 who will sell 3,000 cars of live stock per

year efficiently. If he sells fewer cars, I presume his salary would be scaled off accordingly. He should not sell less than 3,000 cars of live stock per year on the basis of a $6,000 salary, but if you get a man capable of doing that you have got to pay him that much or more. He could sell as many cars of hogs, for instance, as of cattle, if the receipts of the yards run that way and he was given the op- [fol. 917] portunity. Our cattle man sells the most, our sheep man the next and the hog man the least. If we pay higher salaries than any other firm, it is because we have a greater volume of business. One salesman is worth more than another. There are considerations other than the amount he can sell in a year's time. I have future business to look out for. A man can sell 3,000 cars and not do it efficiently and in the next year he may not sell 2,000. I mean the salesman who has the capacity to sell and do it agreeably to the customer so as to maintain his good will. That problem applies to all commission men. If everything were equal, I know of no reason why it should cost us more to employ cattle salesmen in proportion to the work they do than it does any other firm, but everything is not. In some firms the salesmen are owners. With us our men are salaried so every item is an expense. I do not know of any reason why it should cost us more than the ordinary firm to get such service as office help, bookkeepers, stenographers and so on, except to maintain the standing of the firm. We are more particular; we are very careful about our financial standing and we try to keep the character of our men up to the highest notch. We would not hire a man that other people are not getting along with and it may cost us more. The variations every year are astounding. What may be profit on selling a load of cattle this year, will be cut in two the next. The difference in volume may have something to do with it. There are a hundred and one things that may affect it. The 1925 figures do not mean anything. You will find that no two years are alike. Some years profits may double; the next year they will be cut in two. These conditions will affect any other firm just the same. Business will fluctuate between different firms; the same thing that may have influenced our business in 1925 may not have influenced anyone else for that year. There are some conditions which would affect one firm and not

affect another, other than those which simply lead a customer to take his business away from one firm and give it to another.

Some small firms, in order to get business, might hire a high priced saleman and cut their profit away down and in another year that would be wiped out, or you have increased the volume of their business so that the profit would be up again. Hiring a high priced salesman to get new business might be a question of bad judgment and it might be a mat- [fol. 918] ter of waiting until he was acquainted with the following. Considering all of these conditions that affect the market year in and year out, I do not know of any particular reason why it should be more expensive for us to sell a carload of stock or to get necessary clerical assistance than any other firm.

I think a large firm always has more difficulty getting business, both doing it and increasing it. I do not mean that a large firm is an uneconomical proposition. The expense increases as the firm increases in size, but if you can handle a large enough business to make $30,000 a year, where the small firm only make $10,000, it is not an undesirable thing to do. As the business increases in size, the cost of operation per unit increases also, so that the rates remaining the same, the profit decreases. I do not know anything about the fact that a number of firms at the top of the market here operate at loss per unit cost than we do. In some cases we give more in the way of service. Our own market paper costs a lot of money and has value. Practically everything in it will not be found any place else. It contains articles by live stock market authorities. It has tables and quotations; perhaps some of them can be had at other places, but it is unique. We are not under obligation to furnish this separate service, but we do it. It is entirely voluntary. It has not any bearing on the actual service of buying and selling but it has an influence on the commission business and is helpful to the men we serve, both before and after they come to market. It is a service which no other firm on the market renders.

From the point of view of the general market at Omaha, it is desirable to furnish service to dealers on the market at less than the producer or other customer has to pay, because whenever you help the buying power of the market,

you help every man who is interested in it and the more extensively we can get these people to operate, the more help it is going to be on the market. The same argument would not apply to persons bringing live stock on the market for sale. That would not help the buying power, the outlet. Reducing the rate to the trader increases the buying power on the market by removing a handicap that would be placed there if his rate was increased. If it were it would cut down his profits that much more. The same thing would not cut down the profit of the producer. The producer has nothing to do with the buying power. The trader who deals in live stock is a part of the buying power. [fol. 919] He must buy on the market before he sells. The trader does his own buying and the increase has reference only to that part of his operations. He turns over on the market, for which he has to pay a commission. The proportion of live stock sold is small but amounts to a great deal in the aggregate. Assuming that a car of live stock is sold, on the one hand, to the packer buyer or any other country buyer who wants it for slaughter or feeding and, on the other hand, that it is sold first to a dealer and by him sold either directly or through a commission man to the ultimate user, either packer or feeder, there is in that particular case no more buying power in the one case than in the other. A man in making his purchase will not always know what is suitable for a country customer and he must have something that can be re-sold. If the commission men should exercise their option under the Secretary's order and charge traders the full rate, I think it would slow up the volume of business a good deal. I think it would decrease the profits of the producer. If you charge the dealer more money you slow up the buying operations and ultimately affect the producer by removing his competition. You would not pass along the increase in commissions. It naturally follows that that much would be added to the spread in prices while the live stock is passing through the hands of the dealer.

Redirect examination:

Our firm sends the Journal in addition to our own publication. Our customers all ask for it. Not a Journal Stockman is sent out except by request. That is not true of our

own paper although there is always the expression that they are glad to have it. We now have two cattle salesmen. We had three in 1926 and four in 1925. The number of cars a salesman can sell in a year depends on the market and the classes. There is no such thing as knowing in advance how many cars of cattle a salesman can sell in a year. We do not have $6,000 salesmen who sell regularly 3,000 cars per year. We do not have individual salesmen who sell 3,000 cars each per year. There is no such thing on the market.

The relationship between the live stock commission firm and the shipper is a personal service relationship absolutely. What we sell is the personal service of either members or employees of the firm. Capital is to some extent essential in the business. There are times when the day's business will amount to $200,000. The idea of the Department is to pay out when we make collections but we feel it essential to make prompt remittances and in many cases [fol. 920] it is necessary to use our own money to do that. For a small firm, about all that would be needed would be enough capital for a membership and sufficient working capital to take care of checks at the bank. In a good many instances they will have to add something to that working capital through a line of credit at the bank.

Aside from actual buying and selling and furnishing the market information, we are daily interrogated in an advisory way about the future of the market. We have customers who have been with us for years and years but there is a constant change going on. I could not say what percentage continues. We have customers who stay with us 25 or 30 years.

Recross-examination:

Just from the standpoint of whether or not he was making a profit, I would expect a salesman to whom we paid $6,000 salary to handle 3,000 cars a year. Otherwise there would not be any use of paying him $6,000.

(Here follow Exhibits 103, 104, 105, 106, 107, 108, 109, 110, and 111, marked side folio pages 921 to 949, inc.)

[fol. 921] Additional Exhibits Received in Evidence by the Special Master and Considered by the Court

EXHIBIT 103

Schedule of Commissions under Secretary of Agriculture's Order upon Application of the Tariffs Therein to the 1925 Business of Plaintiffs

[fol. 922]

Schedule 1

Omaha Live Stock Exchange, Omaha, Nebraska

Volume of Business, Year 1925

Firm No.	Firm name	Total cars handled	Sale & purchase value of cars handled	Commissions under Sec'y of Agriculture's order	Commissions under Sec'y of Agri. order excluding increase in dealers and speculators
1	Bryson Bros.	2,446.99	$4,298,517.05	$37,508.15	$36,237.62
2	Byron Clow Co.	1,233.06	2,230,466.55	18,781.60	18,452.03
3	Farris-Marcy Co.	1,738.39	3,013,151.83	26,608.60	24,523.36
4	Inter-State Live Stock Commission Co.	4,206.38	7,228,387.00	64,899.20	62,433.65
5	McAdams Bros. & Ihnen.	1,255.79	2,201,206.41	18,953.55	17,901.33
6	Randall & Co.	1,907.72	3,195,552.16	30,143.85	29,418.15
7	Wm. R. Smith & Son.	1,917.12	5,530,531.26	34,885.80	34,845.00
8	Wood Bros.	5,251.35	9,615,088.72	81,597.51	79,220.69
9	Bowles Live Stock Commission Co.	4,609.66	8,422,686.57	69,087.80	68,138.28
10	Clifton Commission Co.	1,181.80	1,822,433.70	18,423.55	18,691.00
11	Dworak-Stolinski Commission Co.	779.80	1,314,101.52	12,171.52	12,016.12
12	Ingwersen & Daugherty	1,126.09	2,118,549.86	17,045.80	16,863.19
13	Lindley-Cahow Commission Co.	6,547.17	13,638,007.73	105,054.99	103,462.27
14	John Ralston Commission Co.	2,750.38	4,764,856.81	40,674.20	38,788.75
15	Security Live Stock Commission Co.	1,105.09	1,892,655.88	16,412.10	15,736.96
16	Winn Bros.	418.67	810,854.92	6,019.00	5,955.79
17	Boetel Live Stock Commission Co.	544.52	.....	8,537.05	8,053.58
18	John Clay & Co.	6,400.72	13,932,265.50	102,579.90	101,516.38
19	Allen Dudley & Co.	2,138.74	4,421,916.47	32,486.90	29,157.20
20	Greene, Madden & Co.	1,450.55	2,716,476.82	21,725.45	18,955.38

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19	Allen Dudley & Co.	2,138.74	4,421,916.47	32,486.90	29,157.20
20	Greene, Madden & Co.	1,450.55	2,716,476.82	21,725.45	18,955.38
21	Lee Live Stock Commission Co.	1,131.54	2,263,482.40	17,189.60	17,039.99
22	Omaha Live Stock Commission Co.	3,506.39	6,429,330.20	52,991.99	51,096.15
23	Rosenbaum Bros. & Co.	2,416.85	5,309,236.18	38,398.20	37,634.60
24	Williams & Sons	478.01	750,547.18	9,362.20	9,315.69
25	Bliss, Wellman & Hopkins	2,534.39	4,652,921.49	37,227.10	34,685.82
27	Donahue Bros., Inc.	2,109.28	3,606,933.29	34,095.20	33,991.19
28	Great Western Commission Co.	5,458.27	10,009,984.12	84,235.15	83,816.52
29	Laverty Bros.	2,134.38	3,737,846.96	32,324.70	30,861.99
30	Mutual Live Stock Commission Co.	3,952.25	7,007,897.16	59,639.90	54,969.34
31	Charles O. Robinson & Co.	2,919.07	5,304,849.61	44,571.70	43,015.39
32	Ward-Murphy Live Stock Commission Co.	747.23	.....	10,431.80	10,382.52
33	Bliss & Son	1,130.09	904,867.87	17,405.60	16,695.03
34	Byers Bros. & Co.	3,486.41	6,161,599.46	55,979.80	52,769.70
35	W. F. Denny & Co.	1,447.51	2,652,529.33	22,377.15	21,943.65
36	Gant Live Stock Commission Co.	249.49	533,148.34	4,668.20	4,405.90
37	Laird Live Stock Commission Co.	910.84	1,690,033.17	14,217.50	14,011.10
38	Melady Bros.	2,803.71	5,529,675.18	42,108.10	40,731.95
39	Roberts Bros. & Rose	6,572.40	11,623,289.47	101,454.50	98,313.46
40	Triangle Live Stock Commission Co.	2,234.20	4,498,338.37	34,753.15	34,104.89
41	Lou Bick Commission Co.	1,260.20	1,956,572.58	19,762.05	18,330.22
42	[fol. 923] Burke-Rickly Co.	1,548.98	2,893,207.00	22,876.55	19,538.59
43	Cox-Jones Commission Co.	5,073.12	10,426,823.64	77,936.65	77,049.71
44	Frazier-Johnson Co.	1,648.12	2,912,427.75	26,100.45	25,733.60
45	Jacob Jacobs Live Stock Commission Co.	907.36	1,685,752.42	13,863.35	13,295.13
46	Martin Bros. & Co.	3,263.33	6,099,151.21	51,589.30	51,002.92
47	L. E. Roberts & Co.	994.69	1,806,317.84	14,650.60	14,395.94
48	Tagg Bros. & Moorhead	5,132.03	10,238,598.92	83,431.50	81,718.18
49	Geo. M. Wood Sheep Commission Co.	307.38	840,920.39	5,511.00	5,459.20
51	Alex G. Buchanan & Son	1,852.16	3,441,972.83	27,110.65	24,341.95
52	Corn Belt Commission Co.	1,901.15	3,379,117.55	29,178.36	27,960.83
53	Fonda-Kells & Christie Co.	1,798.52	3,060,733.27	27,793.30	27,401.30
54	Jackson Live Stock Company	882.11	1,619,938.59	13,751.90	13,311.70
56	Record Live Stock Commission Co.	2,365.97	4,157,242.68	36,566.00	36,102.70
57	Snyder-Malone-Coffman Co.	833.63	1,564,062.47	12,680.80	12,467.18
58	Wood-Oswald Co.	1,998.23	3,474,816.15	31,900.25	31,569.39
60	Globe Live Stock Commission Co.	812.71	.....	11,702.65	11,441.08
		127,811.99	$235,391,871.83	$1,983,433.42	$1,921,271.23

Ratio of Commissions to Value of Sales & Purchases excluding Firms No-. 17, 32, and 60 is .83%.

[fols. 924 & 925]

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Firm No.	Firm name	Selling salaries		Buying salaries		T sel
		Resident owners	Employees, salesmen	Resident owners	Employees, buyers	
1	Bryson Bros.	$9,000.00	$7,800.00	.....	.....	$
2	Byron Clow Co.	10,000.00	2,700.00	.....	.....	
3	Farris-Marcy Co.	4,000.00	9,877.50	.....	$1,380.00	
4	Inter-State Live Stock Commission Co	14,000.00	5,885.00	.....	2,650.00	
5	McAdams Bros. & Ihnen	9,000.00	1,900.00	.....	740.00	
6	Randall & Co.	13,000.00	2,400.00	$5,000.00	.....	
7	Wm. R. Smith & Son	5,000.00	2,700.00	.....	.....	
8	Wood Bros.	10,000.00	13,425.00	.....	1,500.00	
9	Bowles Live Stock Commission Co.	10,000.00	9,900.00	.....	3,275.00	
10	Clifton Commission Co.	8,666.67	6,800.00	.....	.....	
11	Dworak-Stolinski Commission Co.	9,000.00	1,500.00	.....	.....	
12	Ingwersen & Daugherty	10,000.00	4,909.33	.....	.....	
13	Lindley-Cahow Commission Co.	10,000.00	27,325.77	.....	.....	
14	John Ralston Commission Co.	5,000.00	19,496.81	.....	.....	
15	Security Live Stock Commission Co.	5,000.00	6,300.00	.....	.....	
16	Winn Bros.	9,000.00	.....	.....	.....	
17	Boetel Live Stock Commission Co.	5,000.00	.....	.....	.....	
18	John Clay & Co.	.....	23,700.00	.....	8,900.00	
19	Allen Dudley & Co.	9,000.00	7,210.00	.....	.....	
20	Greene, Madden & Co.	9,000.00	2,400.00	.....	.....	
21	Lee Live Stock Commission Co.	10,000.00	1,800.00	.....	.....	
22	Omaha Live Stock Commission Co.	13,000.00	8,900.00	.....	3,600.00	
23	Rosenbaum Bros. & Co.	.....	22,463.34	.....	.....	
24	Williams & Sons	9,000.00	.....	.....	.....	
25	Bliss, Wellman & Hopkins	9,000.00	7,367.50	.....	.....	
27	Donahue Bros., Inc.	5,000.00	5,562.50	5,000.00	.....	
28	Great Western Commission Co.	9,000.00	10,844.40	.....	11,027.50	
29	Laverty Bros.	4,000.00	12,595.00	.....	.....	
30	Mutual Live Stock Commission Co.	10,000.00	7,937.50	.....	2,400.00	
31	Chas. O. Robinson & Co.	.....	24,104.09	.....	.....	
32	Ward-Murphy Live Stock Commission Co.	9,000.00	2,000.00	.....	.....	
33	Bliss & Son	5,000.00	6,400.00	.....	.....	
34	Byers Bros. & Co.	.....	17,420.00	.....	3,700.00	
35	W. F. Denny & Co.	5,000.00	6,537.50	.....	.....	
36	Gant Live Stock Commission Co.	5,000.00	.....	.....	.....	
37	Laird Live Stock Commission Co.	5,000.00	2,430.00	.....	.....	
		4,000.00	12,151.15	.....	400.00	

[fol. 927]

EXHIBIT 105

Schedule of Results of Application of Secretary's Order upon Deducting Adjusted Costs Shown in Exhibit 104 from the Order as Shown in Exhibit 103

[fol. 928]

Schedule 3

FOLD OUT IS TOO LARGE TO BE FILMED

Omaha Live Stock Exchange, Omaha, Nebraska

Results of Application of Secretary of Agriculture's Order, Year 192

Firm No.	Firm name	Commissions under Sec'y of Agriculture's order	Cost of handling live stock	Results	cl de
1	Bryson Bros.	$37,508.15	$35,511.19	$1,996.96	
2	Byron Clow Co.	18,781.60	24,440.01	5,658.41*	
3	Farris-Marcy Co.	26,608.60	26,511.58	97.02	
4	Inter-State Live Stock Commission Co.	64,899.20	58,247.83	6,651.37	
5	McAdams Bros. & Ihnen	18,953.55	21,590.18	2,636.63*	
6	Randall & Co.	30,143.85	37,078.88	6,935.03*	
7	Wm. R. Smith & Son	34,885.80	33,150.82	1,734.98	
8	Wood Bros.	81,597.51	88,899.22	7,301.71*	
9	Bowles Live Stock Commission Co.	69,087.80	60,021.11	9,066.69	
10	Clifton Commission Co.	18,423.55	21,955.94	3,532.39*	
11	Dworak-Stolinski Commission Co.	12,171.52	14,587.65	2,416.13*	
12	Ingwersen & Daugherty	17,045.80	23,645.79	6,599.99*	
13	Lindley-Cahow Commission Co.	105,054.99	87,130.83	17,924.16	
14	John Ralston Commission Co.	40,674.20	43,179.00	2,504.80*	
15	Security Live Stock Commission Co.	16,412.10	18,005.35	1,593.25*	
16	Winn Bros.	6,019.00	11,953.21	5,934.21*	
17	Boetel Live Stock Commission Co.	8,537.05	9,303.72	766.67*	
18	John Clay & Co.	102,579.90	108,180.49	5,600.59*	
19	Allen Dudley & Co.	32,486.90	29,326.06	3,160.84	
20	Greene, Madden & Co.	21,725.45	20,473.68	1,251.77	
21	Lee Live Stock Commission Co.	17,189.60	21,652.13	4,462.53*	
22	Omaha Live Stock Commission Co.	52,991.99	47,986.80	5,005.19	
23	Rosenbaum Bros. & Co.	38,398.20	52,750.28	14,352.08*	
24	Williams & Sons	9,362.20	15,198.17	5,835.97*	
25	Bliss, Wellman & Hopkins	37,227.10	40,872.52	3,645.42*	
27	Donahue Bros. Inc.	34,095.20	35,975.08	1,879.88*	
28	Great Western Commission Co.	84,235.15	87,122.90	2,887.75*	
29	Laverty Bros.	32,324.70	27,447.29	4,877.41	
30	Mutual Live Stock Commission Co.	59,639.90	43,795.85	15,844.05	
31	Chas. O. Robinson & Co.	44,571.70	60,560.35	15,988.65*	
32	Ward-Murphy Live Stock Commission Co.	10,431.80	17,345.72	6,913.92*	
33	Bliss & Son	17,405.60	18,943.75	1,538.15*	
34	Byers Bros. & Co.	55,979.80	50,712.35	5,267.45	
35	W. F. Denny & Co.	22,377.15	20,094.76	2,282.39	
36	Gant Live Stock Commission Co.	4,668.20	6,891.43	2,223.23*	

[fols. 930 & 931]

EXHIBIT 106

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Schedule of Depreciation, All Pla

Omaha Live Stock Exchange, Oma

Depreciation, Year 192

Firm No.		Total depreciation taken, 1925	Book value of equipment				Depreci reser (availa
			Furniture & fixtures	Horses, etc.	Automobiles	Total	
1	Bryson Bros.	$464 62	$3,129 19	.....	.....	$3,129 19	$2,382
2	Byron Clow & Co	None	850 56	$328 05	.....	1,178 61	...
3	Farris-Marcy Co.	"	.....	.....	.....	None	...
4	Interstate Live Stock Com. Co	"	698 00	200 00	$946 00	1,844 00	...
5	McAdams Bros. & Ihmen	"	275 15	90 00	.....	365 15	...
6	Randall & Co	383 69	2,557 99	.....	.....	2,557 99	383
7	Wm. R. Smith & Son	340 23	952 35	.....	1,245 00	2,197 35	340
8	Wood Bros.	288 52	3,144 52	.....	1,145 30	4,289 82	1,609
9	Bowles Live Stock Commission Co	615 99	1,891 79	732 32	629 89	3,254 00	1,730
10	Clifton Commission Co	100.00	195 00	.....	.....	195 00	100
11	Dworak Stolinski Commission Co	None	300 00	.....	300 00	600 00	...
12	Ingwersen & Dougherty	"	357 60	.....	.....	357 60	...
13	Lindley-Cahow Commission Co	218 00	2,637 80	.....	.....	2,637 80	381
14	John Ralston Commission Co	None	.....	.....	.....	None	...
15	Security Live Stock Commission Co	"	600 00	.....	400 00	1,000 00	...
16	Winn Bros.	"	500 00	.....	.....	500 00	...
17	Boetel Live Stock Commission Co	98 88	845 00	.....	.....	845 00	98
18	John Clay & Co	None	.....	.....	.....	None	...
19	Allen Dudley & Co	"	1,144 55	.....	.....	1,144 55	...
20	Green-Madden & Co	"	.....	Depreciated Out	....	.....	...
21	Lee Live Stock Commission Co	27 18	1,411 80	110.00	.....	1,521 80	27
22	Omaha Live Stock Commission Co	353 12	1,650 62	295 00	225 10	2,170 72	1,170
23	Rosenbaum Bros. & Co	253 98	1,465 97	350 00	611 37	2,427 34	599
24	Williams & Sons	50 00	400 00	.....	.....	400 00	50
25	Bliss Wellman & Hopkins	268 36	1,619 25	170 00	.....	1,789 25	268
27	Donahue Bros., Inc	373 16	1,468 16	170 00	375 00	2,013 16	373
28	Great Western Commission Co	None	5,698 49	.....	334 24	6,032 73	...
29	Laverty Bros.	"	1,000 00	.....	.....	1,000 00	...
30	Mutual Live Stock Commission Co	155 00	950 19	.....	586 04	1,536 23	155
31	C. O. Robinson & Co	None	5,420 61	.....	.....	5,420 61	538
32	Ward-Murphy Live Stock Com. Co	"	322 23	.....	.....	322 23	...
33	Bliss & Son	"	755 00	.....	785 00	1,540 00	...
34	Byers Bros. & Co	"	2,000 00	250 00	.....	2,250 00	...
35	W. F. Denny & Co	"	.....	.....	.....	None	...
36	Gant Live Stock Commission Co	"	275 00	.....	.....	275 00	...
37	Laird Live Stock Commission Co	"	1,500 00	.....	.....	1,500 00	...
38	Melady Bros.	400 00	1,460 00	.....	600 00	2,060 00	850
39	Roberts Bros. & Rose	627 51	3,700 98	300 00	406 69	4,407 67	622

[fols. 933 & 934]

EXHIBIT 107

Capital Investment in Exchange Memberships, 1925

Omaha Live Stock Exchange, Omaha, Nebraska

Memberships, Year 1925

Firm No.	Firm name	Value of memberships set up	Memberships issued to	m
1	Bryson Bros.	None		
2	Byron Clow & Co.	None		
3	Farris-Marcy Co.	None		
4	Inter-State Live Stock Commission Co.	$4,300.00	(C. F. Cox (Jas. J. Donahue (R. L. Reynolds (Harry H. Francis	
5	McAdams Bros. & Ihnen	None		
6	Randall & Co.	6,500.00	(T. B. McEntee (A. J. Randall (J. J. Robb	
7	Wm. R. Smith & Son	50.00	G. S. Taylor	
8	Wood Brothers	None		2

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9	Bowles Live Stock Commission Co.	8,120.00	(Win C. Davidson (Martin Heller (Lance Jones (Rob Cooper	
10	Clifton Commission Co.	None		
11	Dworak-Stolinski Commission Co.	10,000.00	(Frank Dworak (T. J. Stolinski	
		1,500.00	L. Oliver (Traders Membership)	
12	Ingwersen & Dougherty	None		
13	Lindley-Cahow Commission Co.	None		1
14	[fol. 935] Ralston Live Stock Commission Co	None		
15	Security Live Stock Commission Co.	5,000.00	John Cunningham	
16	Winn Bros.	None		

[fol. 939 & 940]

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EXHIBIT 108

Ratio of Commissions to Receipts, 1925, under Tariff N

Omaha Live Stock Exchange, Omaha, Nebraska

Ratio of Commissions & Net Results to Gross Receipts, Y

Firm No.	Firm name	Sale & purchase value of live stock handled	Actual commissions received	Expense of h dling live st
1	Bryson Bros.	$4,298,517.05	$40,934.33	$35,511
2	Byron Clow Co.	2,230,466.55	20,550.79	24,440
3	Farris-Marcy Co.	3,013,151.83	27,164.57	26,511
4	Inter-State Live Stock Commission Co.	7,228,387.00	71,324.73	58,247
5	McAdams Bros. & Ihnen	2,201,206.41	20,319.91	21,590
6	Randall & Co.	3,195,552.16	33,865.64	37,078
7	Wm. R. Smith & Son	5,530,531.26	38,692.90	33,150
8	Wood Bros.	9,615,088.72	89,914.53	88,899
9	Bowles Live Stock Commission Co.	8,422,686.57	78,217.92	60,021
10	Clifton Commission Co.	1,822,433.70	21,314.54	21,953
11	Dworak-Stolinski Commission Co.	1,314,101.52	13,904.32	14,587
12	Ingwersen-Daugherty	2,118,549.86	19,216.56	23,645
13	Lindley-Cahow Commission Co.	13,638,007.73	117,723.35	87,130
14	John Ralston Commission Co.	4,764,856.81	44,542.21	43,179
15	Security Live Stock Commission Co.	1,892,655.88	17,817.36	18,003
16	Winn Bros.	810,854.92	6,789.63	11,953
17	Boetel Live Stock Commission Co.	.....	9,103.69	9,30
18	John Clay & Co.	13,932,265.50	115,524.40	108,18
19	Allen Dudley & Co.	4,421,916.47	31,546.56	29,32
20	Greene, Madden & Co.	2,716,476.82	21,409.19	20,47
21	Lee Live Stock Commission Co.	2,263,482.40	19,050.23	21,65
22	Omaha Live Stock Commission Co.	6,429,330.20	57,744.28	47,98
23	Rosenbaum Bros. & Co.	5,309,236.18	42,238.51	52,75
24	Williams & Sons	750,547.18	9,208.37	15,19
25	Bliss, Wellman & Hopkins	4,652,921.49	38,797.57	40,87
27	Donahue Bros., Inc.	3,606,933.29	38,861.42	35,97
28	Great Western Commission Co.	10,009,984.12	95,296.93	87,12
29	Laverty Bros.	3,737,846.96	34,400.74	27,44
30	Mutual Live Stock Commission Co.	7,007,897.16	62,602.68	43,79
31	Chas. O. Robinson & Co.	5,304,849.61	49,164.71	60,56
32	Ward-Murphy Live Stock Commission Co.	.....	11,288.58	17,34
33	Bliss & Son	904,867.87	18,645.20	18,94
34	Byers Bros. & Co.	6,161,599.46	56,843.72	50,71
35	W. F. Denny & Co.	2,652,529.33	24,559.50	20,09
36	Gant Live Stock Commission Co.	533,148.34	4,955.88	6,89
37	Laird Live Stock Commission Co.	1,690,033.17	15,394.78	17,21
38	Melady Bros.	5,529,675.18	46,327.61	43,09
	[illegible] Bros. & Rose	11,623,289.47	110,986.83	90,83
	[illegible] Live Stock Commission Co.	4,498,338.37	38,892.58	37,65

[fols. 942 & 943]

EXHIBIT 109

Ratio of Commissions to Gross Receipts, 1925, under Secretary of Agriculture's Order

Omaha Live Stock Exchange, Omaha, Nebraska

Ratio of Commissions to Gross Receipts, Year 1925

Firm No.	Firm name	Sale & purchase value of live stock handled	Commissions under Sec'y of Agriculture's order		Commissions under Sec'y of Agri. order excluding increase in dealers & speculato	
			Amount	Ratio to value	Amount	Ratio to val
1	Bryson Bros.	$4,298,517.05	$37,508.15	.0087	$36,237.62	.0084
2	Byron Clow Co	2,230,466.55	18,781.60	.0084	18,452.03	.0083
3	Farris-Marcy Co.	3,013,151.83	26,608.60	.0088	24,523.36	.0081
4	Inter-State Live Stock Commission Co.	7,228,387.00	64,899.20	.0090	62,433.65	.0086
5	McAdams Bros. & Ihnen	2,201,206.41	18,953.55	.0086	17,901.33	.0081
6	Randall & Co	3,195,552.16	30,143.85	.0094	29,418.15	.0092
7	Wm. R. Smith & Son	5,530,531.26	34,885.80	.0063	34,845.00	.0063
8	Wood Bros.	9,615,088.72	81,597.51	.0085	79,220.69	.0082
9	Bowles Live Stock Commission Co.	8,422,686.57	69,087.80	.0082	68,138.28	.0081
10	Clifton Commission Co	1,822,433.70	18,423.55	.0101	18,691.00	.0103
11	Dworak-Stolinski Commission Co	1,314,101.52	12,171.52	.0093	12,016.12	.0091
12	Ingwersen & Daugherty	2,118,549.86	17,045.80	.0080	16,863.19	.0080
13	Lindley-Cahow Commission Co	13,638,007.73	105,054.99	.0077	103,462.27	.0076
14	John Ralston Commission Co	4,764,856.81	40,674.20	.0085	38,788.75	.0081
15	Security Live Stock Commission Co.	1,892,655.88	16,412.10	.0087	15,736.96	.0083
16	Winn Bros.	810,854.92	6,019.00	.0074	5,955.79	.0073
17	Boetel Live Stock Commission Co.	Not Furnished	8,537.05	.....	8,053.58	.....
18	John Clay & Co	13,932,265.50	102,579.90	.0074	101,516.38	.0073
19	Allen Dudley & Co	4,421,916.47	32,486.90	.0073	29,157.20	.0066
20	Green, Madden & Co	2,716,476.82	21,725.45	.0080	18,955.38	.0070
21	Lee Live Stock Commission Co	2,263,482.40	17,189.60	.0076	17,039.99	.0075
22	Omaha Live Stock Commission Co.	6,429,330.20	52,991.99	.0082	51,096.15	.0079
23	Rosenbaum Bros. & Co	5,309,236.18	38,398.20	.0072	37,634.60	.0071
24	Williams & Sons	750,547.18	9,362.20	.0125	9,315.69	.0124
25	Bliss, Wellman & Hopkins	4,652,921.49	37,227.10	.0080	34,685.82	.0075
27	Donahue Bros., Inc	3,606,933.29	34,095.20	.0095	33,991.19	.0094
28	Great Western Commission Co	10,009,984.12	84,235.15	.0084	83,816.52	.0084
29	Laverty Bros.	3,737,846.96	32,324.70	.0086	30,861.99	.0083
30	Mutual Live Stock Commission Co.	7,007,897.16	59,639.90	.0085	54,969.34	.0078
31	Chas. O. Robinson & Co	5,304,849.61	44,571.70	.0084	43,015.39	.0081
32	Ward-Murphy Live Stock Commission Co	Not Furnished	10,431.80	.....	10,382.52	.....
33	Bliss & Son	904,867.87	17,405.60	.0192	16,695.03	.0184
34	Byers Bros. & Co	6,161,599.46	55,979.80	.0091	52,769.70	.0086
35	W. F. Denny & Co	2,652,529.33	22,377.15	.0084	21,943.65	.0083
36	Gant Live Stock Commission Co	533,148.34	4,668.20	.0088	4,405.90	.0083
37	Laird Live Stock Commission Co	1,690,033.17	14,217.50	.0084	14,011.10	.0083
38	Melady Bros.	5,529,675.18	42,108.10	.0076	40,731.95	.0074
39	Roberts Bros. & Rose	11,623,289.47	101,454.50	.0087	98,313.46	.0085
40	Triangle Live Stock Commission Co.	4,498,338.37	34,753.15	.0077	34,104.89	.0076
41	Lou Bick Commission Co	1,956,572.58	19,762.05	.0101	18,330.22	.0094
42	[fol. 944] Burke-Rickly Co	2,893,207.00	22,876.55	.0079	19,538.59	.0068
43	Cox-Jones Commission Co	10,426,823.64	77,936.65	.0075	77,049.71	.0074
44	Frazier-Johnson Co.	2,912,427.75	26,100.45	.0090	25,733.60	.0088
45	Jacob Jacobs Live Stock Commis-					

5	McAdams Bros. & Ihnen	3,201,206 41	18,953 55	.0086	17,901 33	.0081
6	Randall & Co	3,195,552 16	30,143 85	.0094	29,418 15	.0092
7	Wm. R. Smith & Son	5,530,531 26	34,885 80	.0063	34,845 00	.0063
8	Wood Bros.	9,615,088 72	81,597 51	.0085	79,220 69	.0082
9	Bowles Live Stock Commission Co.	8,422,686 57	69,087 80	.0082	68,138 28	.0081
10	Clifton Commission Co	1,822,433 70	18,423 55	.0101	18,691 00	.0103
11	Dworak-Stolinski Commission Co	1,314,101 52	12,171 52	.0093	12,016 12	.0091
12	Ingwersen & Daugherty	2,118,549 86	17,045 80	.0080	16,863 19	.0080
13	Lindley-Cahow Commission Co	13,638,007 73	105,054 99	.0077	103,462 27	.0076
14	John Ralston Commission Co	4,764,856 81	40,674 20	.0085	38,788 75	.0081
15	Security Live Stock Commission Co.	1,892,655 88	16,412 10	.0087	15,736 96	.0083
16	Winn Bros.	810,854 92	6,019 00	.0074	5,955 79	.0073
17	Boetel Live Stock Commission Co.	Not Furnished	8,537 05	.....	8,053 58	.....
18	John Clay & Co	13,932,265 50	102,579 90	.0074	101,516 38	.0073
19	Allen Dudley & Co	4,421,916 47	32,486 90	.0073	29,157 20	.0066
20	Green, Madden & Co	2,716,476 82	21,725 45	.0080	18,955 38	.0070
21	Lee Live Stock Commission Co	2,263,482 40	17,189 60	.0076	17,039 99	.0075
22	Omaha Live Stock Commission Co.	6,429,330 20	52,991 99	.0082	51,096 15	.0079
23	Rosenbaum Bros. & Co	5,309,236 18	38,398 20	.0072	37,634 60	.0071
24	Williams & Sons	750,547 18	9,362 20	.0125	9,315 69	.0124
25	Bliss, Wellman & Hopkins	4,652,921 49	37,227 10	.0080	34,685 82	.0075
27	Donahue Bros., Inc	3,606,933 29	34,095 20	.0095	33,991 19	.0094
28	Great Western Commission Co	10,009,984 12	84,235 15	.0084	83,816 52	.0084
29	Laverty Bros.	3,737,846 96	32,324 70	.0086	30,861 99	.0083
30	Mutual Live Stock Commission Co.	7,007,897 16	59,639 90	.0085	54,969 34	.0078
31	Chas. O. Robinson & Co	5,304,849 61	44,571 70	.0084	43,015 39	.0081
32	Ward-Murphy Live Stock Commission Co	Not Furnished	10,431 80	.....	10,382 52	.....
33	Bliss & Son	904,867 87	17,405 60	.0192	16,695 03	.0184
34	Byers Bros. & Co	6,161,599 46	55,979 80	.0091	52,769 70	.0086
35	W. F. Denny & Co	2,652,529 33	22,377 15	.0084	21,943 65	.0083
36	Gant Live Stock Commission Co	533,148 34	4,668 20	.0088	4,405 90	.0083
37	Laird Live Stock Commission Co	1,690,033 17	14,217 50	.0084	14,011 10	.0083
38	Melady Bros.	5,529,675 18	42,108 10	.0076	40,731 95	.0074
39	Roberts Bros. & Rose	11,623,289 47	101,454 50	.0087	98,313 46	.0085
40	Triangle Live Stock Commission Co.	4,498,338 37	34,753 15	.0077	34,104 89	.0076
41	Lou Bick Commission Co	1,956,572 58	19,762 05	.0101	18,330 22	.0094
42	[fol. 944] Burke-Rickly Co	2,893,207 00	22,876 55	.0079	19,538 59	.0068
43	Cox-Jones Commission Co	10,426,823 64	77,936 65	.0075	77,049 71	.0074
44	Frazier-Johnson Co.	2,912,427 75	26,100 45	.0090	25,733 60	.0088
45	Jacob Jacobs Live Stock Commission Co	1,685,752 42	13,863 35	.0082	13,295 13	.0079
46	Martin Bros. & Co	6,099,151 21	51,589 30	.0085	51,002 92	.0084
47	L. E. Roberts & Co	1,806,317 84	14,650 60	.0081	14,395 94	.0080
48	Tagg Bros. & Moorhead	10,238,598 92	83,431 50	.0081	81,718 18	.0080
49	Geo. M. Wood Sheep Commission Co.	840,920 39	5,511 00	.0066	5,459 20	.0065
51	Alex G. Buchanan & Son	3,441,972 83	27,110 65	.0079	24,341 95	.0071
52	Corn Belt Commission Co	3,379,117 55	29,178 36	.0086	27,960 83	.0083
53	Fonda-Kells & Christie Co	3,060,733 27	27,793 30	.0091	27,401 30	.0090
54	Jackson Live Stock Co	1,619,938 59	13,751 90	.0085	13,311 70	.0082
56	Record Live Stock Commission Co.	4,157,242 68	36,566 00	.0088	36,102 70	.0087
57	Snyder-Malone-Coffman Co	1,564,062 47	12,680 80	.0081	12,467 18	.0080
58	Wood-Oswald Co.	3,474,816 15	31,900 25	.0092	31,569 39	.0091
60	Globe Live Stock Commission Co.	Not Furnished	11,702 65	.....	11,441 08	.....
		$235,391,871 83	$1,983,433 42	.0083	$1,921,271 23	.0080

Endorsed: Filed Jul. 13, 1927, R. C. Hoyt, Clerk.

[fol. 945]

EXHIBIT 110

Ratio of Net Results to Gross Receipts under Secretary of Agriculture's Order

[fol. 946]

Omaha Live Stock Exchange, Omaha, Nebraska

Ratio of Net Results to Gross Receipts, Year 1925

Firm No.	Firm name	Sale & purchase value of live stock handled	Net results under Sec'y of Agriculture's order		Net results under Sec'y of Agri. order excluding increase in dealers & speculators	
			Amount	Ratio to value	Amount	Ratio to value
1	Bryson Bros.	$4,298,517.05	$1,996.96	.00046	$726.43	.00017
2	Byron Clow Co	2,230,466.55	5,658.41*	.....	5,987.98*	.....
3	Farris-Marcy Co.	3,013,151.83	97.02	.00003	1,988.22*	.....
4	Inter-State Live Stock Commission Co.	7,228,387.00	6,651.37	.00092	4,185.82	00058
5	McAdams Bros. & Ihnen	2,201,206.41	2,636.63*	.....	3,688.85*	.....
6	Randall & Co	3,195,552.16	6,935.03*	.....	7,660.73*	.....
7	Wm. R. Smith & Son	5,530,531.26	1,734.98	.00031	1,694.18	.00031
8	Wood Bros.	9,615,088.72	7,301.71*	.....	9,678.53*	.....
9	Bowles Live Stock Commission Co	8,422,686.57	9,066.69	.00108	8,117.17	.00096
10	Clifton Commission Co	1,822,433.70	3,532.39*	.....	3,264.94*	.....
11	Dworak-Stolinski Commission Co	1,314,101.52	2,416.13*	.....	2,571.53*	.....
12	Ingwersen & Daugherty	2,118,549.86	6,599.99*	.....	6,782.60*	.....
13	Lindley-Cahow Commission Co	13,638,007.73	17,924.16	.00131	16,331.44	.00120
14	John Ralston Commission Co	4,764,856.81	2,504.80*	.....	4,390.25*	.....
15	Security Live Stock Commission Co	1,892,655.88	1,593.25*	.....	2,268.39*	.....
16	Winn Bros.	810,854.92	5,934.21*	.....	5,997.42*	.....
17	Boetel Live Stock Commission Co	Not Furnished	766.67*	.....	1,250.14*	.....
18	John Clay & Co	13,932,265.50	5,600.59*	.....	6,664.11*	.....
19	Allen Dudley & Co	4,421,916.47	3,160.84	.00071	168.86*	.....
20	Greene, Madden & Co	2,716,476.82	1,251.77	.00046	1,518.30*	.....
21	Lee Live Stock Commission Co	2,263,482.40	4,462.53*	.....	4,612.14*	.....
22	Omaha Live Stock Commission Co	6,429,330.20	5,005.19	.00078	3,109.35	.00048
23	Rosenbaum Bros. & Co	5,309,236.18	14,352.08*	.....	15,115.68*	.....
24	Williams & Sons	750,547.18	5,835.97*	.....	5,882.48*	.....
25	Bliss, Wellman & Hopkins	4,652,921.49	3,645.42*	.....	6,186.70*	.....
27	Donahue Bros., Inc	3,606,933.29	1,879.88*	.....	1,983.89*	.....
28	Great Western Commission Co	10,009,984.12	2,887.75*	.....	3,306.38*	.....
29	Laverty Bros.	3,737,846.96	4,877.41	.00130	3,414.70	.00091
30	Mutual Live Stock Commission Co	7,007,897.16	15,844.05	.00226	11,173.49	.00159
31	Chas. O. Robinson & Co	5,304,849.61	15,988.65*	.....	17,544.96*	.....
32	Ward-Murphy Live Stock Commission Co.	Not Furnished	6,913.92*	.....	6,963.20*	.....
33	Bliss & Son	904,867.87	1,538.15*	.....	2,248.72*	.....
34	Byers Bros. & Co	6,161,599.46	5,267.45	.00085	2,057.35	.00033
35	W. F. Denny & Co	2,652,529.33	2,282.39	.00086	1,848.89	.00070
36	Gant Live Stock Commission Co	533,148.34	2,223.23*	.....	2,485.53*	.....
37	Laird Live Stock Commission Co	1,690,033.17	3,001.42*	.....	3,207.82*	.....
38	Melady Bros.	5,529,675.18	985.91*	.....	2,362.06*	.....
39	Roberts Bros. & Rose	11,623,289.47	10,620.04	.00091	7,479.00	.00064
40	Triangle Live Stock Commission Co	4,498,338.37	2,901.70*	.....	3,549.96*	.....
41	Lou Bick Commission Co	1,956,572.58	1,210.37	.00062	221.46*	.....
42	[fol. 947] Burke-Rickly Co	2,893,207.00	2,005.94	.00069	1,332.02*	.....
43	Cox-Jones Commission Co	10,426,823.64	10,084.29	.00097	9,197.35	.00088
44	Frazier-Johnson Co	2,912,427.75	4,635.40*	.....	5,002.25*	.....
45	Jacob Jacobs Live Stock Commission Co.	1,685,752.42	4,937.89*	.....	5,506.11*	.....
46	Martin Bros. & Co	6,099,151.21	1,352.37*	.....	1,938.75*	.....
47	L. E. Roberts & Co	1,806,317.84	6,573.89*		6,828.55*	

3	Farris-Marcy Co.	3,013,151.83	97.02	.00003	1,988.22*	.....	
4	Inter-State Live Stock Commission Co.	7,228,387.00	6,651.37	.00092	4,185.82	.00058	
5	McAdams Bros. & Ihnen	2,201,206.41	2,636.63*	.....	3,688.85*	.....	
6	Randall & Co	3,195,552.16	6,935.03*	.....	7,660.73*	.....	
7	Wm. R. Smith & Son	5,530,531.26	1,734.98	.00031	1,694.18	.00031	
8	Wood Bros.	9,615,088.72	7,301.71*	.....	9,678.53*	.....	
9	Bowles Live Stock Commission Co	8,422,686.57	9,066.69	.00108	8,117.17	.00096	
10	Clifton Commission Co	1,822,433.70	3,532.39*	.....	3,264.94*	.....	
11	Dworak-Stolinski Commission Co	1,314,101.52	2,416.13*	.....	2,571.53*	.....	
12	Ingwersen & Daugherty	2,118,549.86	6,599.99*	.....	6,782.60*	.....	
13	Lindley-Cahow Commission Co	13,638,007.73	17,924.16	.00131	16,331.44	.00120	
14	John Ralston Commission Co	4,764,856.81	2,504.80*	.....	4,390.25*	.....	
15	Security Live Stock Commission Co	1,892,655.88	1,593.25*	.....	2,268.39*	.....	
16	Winn Bros.	810,854.92	5,934.21*	.....	5,997.42*	.....	
17	Boetel Live Stock Commission Co	Not Furnished	766.67*	.....	1,250.14*	.....	
18	John Clay & Co	13,932,265.50	5,600.59*	.....	6,664.11*	.....	
19	Allen Dudley & Co	4,421,916.47	3,160.84	.00071	168.86*	.....	
20	Greene, Madden & Co	2,716,476.82	1,251.77	.00046	1,518.30*	.....	
21	Lee Live Stock Commission Co	2,263,482.40	4,462.53*	.....	4,612.14*	.....	
22	Omaha Live Stock Commission Co	6,429,330.20	5,005.19	.00078	3,109.35	.00048	
23	Rosenbaum Bros. & Co	5,309,236.18	14,352.08*	.....	15,115.68*	.....	
24	Williams & Sons	750,547.18	5,835.97*	.....	5,882.48*	.....	
25	Bliss, Wellman & Hopkins	4,652,921.49	3,645.42*	.....	6,186.70*	.....	
27	Donahue Bros., Inc	3,606,933.29	1,879.88*	.....	1,983.89*	.....	
28	Great Western Commission Co	10,009,984.12	2,887.75*	.....	3,306.38*	.....	
29	Laverty Bros.	3,737,846.96	4,877.41	.00130	3,414.70	.00091	
30	Mutual Live Stock Commission Co	7,007,897.16	15,844.05	.00226	11,173.49	.00159	
31	Chas. O. Robinson & Co	5,304,849.61	15,988.65*	.....	17,544.96*	.....	
32	Ward-Murphy Live Stock Commission Co.	Not Furnished	6,913.92*	.....	6,963.20*	.....	
33	Bliss & Son	904,867.87	1,538.15*	.....	2,248.72*	.....	
34	Byers Bros. & Co	6,161,599.46	5,267.45	.00085	2,057.35	.00033	
35	W. F. Denny & Co	2,652,529.33	2,282.39	.00086	1,848.89	.00070	
36	Gant Live Stock Commission Co	533,148.34	2,223.23*	.....	2,485.53*	.....	
37	Laird Live Stock Commission Co	1,690,033.17	3,001.42*	.....	3,207.82*	.....	
38	Melady Bros.	5,529,675.18	985.91*	.....	2,362.06*	.....	
39	Roberts Bros. & Rose	11,623,289.47	10,620.04	.00091	7,479.00	.00064	
40	Triangle Live Stock Commission Co	4,498,338.37	2,901.70*	.....	3,549.96*	.....	
41	Lou Bick Commission Co	1,956,572.58	1,210.37	.00062	221.46*	.....	
42	[fol. 947] Burke-Rickly Co	2,893,207.00	2,005.94	.00069	1,332.02*	.....	
43	Cox-Jones Commission Co	10,426,823.64	10,084.29	.00097	9,197.35	.00088	
44	Frazier-Johnson Co	2,912,427.75	4,635.40*	.....	5,002.25*	.....	
45	Jacob Jacobs Live Stock Commission Co.	1,685,752.42	4,937.89*	.....	5,506.11*	.....	
46	Martin Bros. & Co	6,099,151.21	1,352.37*	.....	1,938.75*	.....	
47	L. E. Roberts & Co	1,806,317.84	6,573.89*	.....	6,828.55*	.....	
48	Tagg Bros. & Moorhead	10,238,598.92	664.71*	.....	2,378.03*	.....	
49	Geo. M. Wood Sheep Commission Co.	840,920.39	6,869.82*	.....	6,921.62*	.....	
51	Alex G. Buchanan & Son	3,441,972.83	8,208.00	.00238	5,439.30	.00158	
52	Corn Belt Commission Co	3,379,117.55	1,544.17	.00046	326.64	.00010	
53	Fonda-Kells & Christie Co	3,060,733.27	3,445.04*	.....	3,837.04*	.....	
54	Jackson Live Stock Co	1,619,938.59	6,827.55*	.....	7,267.75*	.....	
56	Record Live Stock Commission Co	4,157,242.68	5,988.81	.00144	5,525.51	.00133	
57	Snyder-Malone-Coffman Co.	1,564,062.47	5,826.31*	.....	6,039.93*	.....	
58	Wood-Oswald Co.	3,474,816.15	5,515.66*	.....	5,846.52*	.....	
60	Globe Live Stock Commission Co	Not Furnished	3,365.44*	.....	3,627.01*	.....	
		$235,391,871.83	$53,288.60*	.00094	$115,450.79*	.00078	

Endorsed: Filed Jul. 13, 1927. R. C. Hoyt, Clerk.

[*Red in copy.]

EXHIBIT 111

Schedule of Cost Per Car, Total Commissions, Commissiohs Per Car, and Net Results under Secretary of Agriculture's Order,

Omaha Live Stock Exchange, Omaha, Nebraska—Total Cost Per Car for Handling Live Stock—Year 1925

FOLD OUT IS TOO LARGE TO BE FILMED

Firm Name	Number of cars handled	Cost of handling live stock	Cost per car	Total commissions		Avg. commissions per car	
				Under Sec'y of Agriculture's order	Sec'y of Agri. order excluding increase in dealers & speculators	Under Sec'y of Agriculture's order	Sec'y of Ag order ex cluding i crease i dealers speculato
on Bros.	$2,446.99	$35,511.19	$14.51	$37,508.15	$36,237.62	$15.33	$14.81
n Clow Co.	1,233.06	24,440.01	19.82	18,781.60	18,452.03	15.23	14.96
s-Marcy Co.	1,738.39	26,511.58	15.25	26,608.60	24,523.36	15.31	14.11
State Live Stock Commission Co.	4,206.38	58,247.83	13.85	64,899.20	62,433.65	15.43	14.84
ams Bros. & Ihnen	1,255.79	21,590.18	17.19	18,953.55	17,901.33	15.09	14.26
ll & Co.	1,907.72	37,078.88	19.44	30,143.85	29,418.15	15.80	15.42
R. Smith & Son	1,917.12	33,150.82	17.29	34,885.80	34,845.00	18.18	18.18
Bros.	5,251.35	88,899.22	16.93	81,597.51	79,220.69	15.54	15.09
s Live Stock Commission Co.	4,609.66	60,021.11	13.02	69,087.80	68,138.28	14.99	14.78
n Commission Co.	1,181.80	21,995.94	18.58	18,423.55	18,691.00	15.59	15.82
k-Stolinski Commission Co.	779.80	14,587.65	18.71	12,171.52	12,016.12	15.61	15.41
rsen & Daugherty	1,126.09	23,645.79	21.00	17,045.80	16,863.19	15.14	14.97
y-Cahow Commission Co	6,547.17	87,130.83	13.31	105,054.99	103,462.27	16.05	15.80
Ralston Commission Co.	2,750.38	43,179.00	15.70	40,674.20	38,788.75	14.79	14.10
ty Live Stock Commission Co.	1,105.09	18,005.35	16.29	16,412.10	15,736.96	14.85	14.24
Bros.	418.67	11,953.21	28.55	6,019.00	5,955.79	14.38	14.23
Live Stock Commission Co.	544.52	9,303.72	17.09	8,537.05	8,053.58	15.68	14.79
Clay & Co.	6,400.72	108,180.49	16.90	102,579.90	101,516.38	16.03	15.86
Dudley & Co.	2,138.74	29,326.06	13.71	32,486.90	29,157.20	15.19	13.63
e, Madden & Co.	1,450.55	20,473.68	14.11	21,725.45	18,955.38	14.98	13.07
ve Stock Commission Co.	1,131.54	21,652.13	19.14	17,189.60	17,039.99	15.19	15.06
a Live Stock Commission Co.	3,506.39	47,986.80	13.69	52,991.99	51,096.15	15.11	14.57
baum Bros. & Co.	2,416.85	52,750.28	21.83	38,398.20	37,634.60	15.89	15.57
ms & Sons	478.01	15,198.17	31.80	9,362.20	9,315.69	19.59	19.49
Wellman & Hopkins	2,534.39	40,872.52	16.13	37,227.10	34,685.82	14.69	13.69
ue Bros. Inc.	2,109.28	35,975.08	17.06	34,095.20	33,991.19	16.16	16.12
Western Commission Co.	5,458.27	87,122.90	15.96	84,235.15	83,816.52	15.43	15.36
y Bros.	2,134.38	27,447.29	12.86	32,324.70	30,861.99	15.14	14.46
l Live Stock Commission Co.	3,952.25	43,795.85	11.08	59,639.90	54,969.34	15.09	13.91
s O. Robinson & Co.	2,919.07	60,560.35	20.75	44.571.70	43,015.39	15.27	14.74
Murphy Live Stock Commission Co.	747.23	17,345.72	23.21	10.431.80	10,382.52	13.96	13.89
& Son	1,130.09	18,943.75	16.76	17,405.60	16,695.03	15.40	14.77
Bros. & Co.	3,486.41	50,712.35	14.55	55,979.80	52,769.70	16.06	15.14
Denny & Co.	1,447.51	20,094.76	13.88	22,377.15	21,943.65	15.46	15.16
ive Stock Commission Co.	249.49	6,891.43	27.62	4,668.20	4,405.90	18.71	17.66
Live Stock Commission Co.	910.84	17,218.92	18.90	14,217.50	14,011.10	15.61	15.38
y Bros.	2,803.71	43,094.01	15.37	42,108.10	40,731.95	15.02	14.53
s Bros. & Rose	6,572.40	90,834.46	13.82	101,454.50	98,313.46	15.44	14.96



[fol. 950] EXHIBIT 112

Schedules of Live-stock Commission Rates at Chicago

Chicago

Rule X

Section 1. The Commission for selling live stock shall not be less than the following rates:

Single Ownership—Unmixed Carload Lots

Cattle:

50 head or less $13.00, and 15c per head for each additional head over 20 head, with a maximum of $21.00. When car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single deck:

50 head or less $13.00, and 15c per head for each additional head over 50 head, with a maximum of $22.00.

Double deck:

70 head or less, $23.00, and 30c per head for each additional head over 70 head, with a maximum of $28.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs—Single deck:

50 head or less $13.00, and 15c per head for each additional head over 50 head, with a maximum of $15.00. An additional charge of 30c shall be made for each full 500 pounds weight over 17,000 pounds.

Double deck:

80 head or less, $18.00, and 15c per head for each additional head over 80 head, with a maximum of $23.00. An additional charge of 30c shall be made for each full 500 pounds weight over 27,000 pounds. When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single deck, $14.00.

Sheep—Double deck, $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Section 2. Single Ownership—Mixed Live Stock.

	Per head	Single-deck maximum	Double-deck maximum
Cattle	85c.	$21.00	.....
Calves	35c.	22.00	$28.00
Hogs	25c.	15.00	23.00
Sheep	20c.	14.00	20.00

Minimum of $16.00, and maximum of $26.00, on single-deck car. Minimum of $21.00, and maximum of $29.00, on double-deck car. When a car contains cattle and calves only, the minimum shall be $17.00 and the maximum $24.00.

Section 2½. Plural Ownership—Carload Lots.

Plural owner car lots—Sold as Single Ownership:

When plural ownership car load lots of live stock are [fol. 951] handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not pro-rated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification

When car loads of live stock require prorating, separate sorting, selling, or weighing for ownership marks, brands or other identification, or at request of shipper, the following rates shall apply:

Unmixed cars:

		Single-deck		Double-deck	
	Per head	Min.	Max.	Min.	Max.
Cattle	85c.	$18.00	$22.00	.....	.....
Calves	35c.	18.00	23.00	$24.00	$29.00
Hogs	25c.	14.00	16.00	19.00	24.00
Sheep	20c.	14.00	16.00	20.00	22.00

An additional charge of 30c shall be made for each full 50c pounds weight of hogs over 17,000 pounds in single-deck and 27,000 pounds in double-deck.

Mixed cars:

	Per head	Single-deck maximum	Double-deck maximum
Cattle	85c.	$22.00	.....
Calves	35c.	23.00	$29.00
Hogs	25c.	16.00	24.00
Sheep	20c.	16.00	22.00

Minimum of $17.00, and maximum of $26.00, on a single-deck car. Minimum of $22.00, and maximum of $29.00, on double-deck car. When a car contains cattle and calves only, the minimum shall be $18.00 and the maximum $24.00.

Under this schedule no owner shall pay more than the maximum commision and extra service charges, if any, on single ownership car loads.

Extra Services

Drafts:

1. Single Ownership.

When requested or necessary to grade or sort car lots of live stock of single ownership into market grades and classes, a charge of 15c shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge $2.00.

2. Plural Ownership.

When requested or necessary to grade or sort car lots of live stock of plural ownership for ownership, market grades and classes, brands, marks, or other identification, a charge of 15c per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25c for each owner [fol. 952] shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual account sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5c extra shall be made for each statement.

Section 3. Less Than Carload Lots.

On less than 14 head of cattle shipped in one car the commission shall be 90 cents per head, and provided, that on less than 40 calves shipped in one car the commission shall be 40 cents per head, and provided, that on less than 40 hogs shipped in one car the commission shall be 30 cents per head, and provided, that on less than 50 head of sheep or goats shipped in one car the commission shall be 20 cents per head.

Section 4. (A) Where a portion of a car is turned over for sale by the consignee to another member of the Exchange, the commission shall be charged at the rates as shown in Sections 1, 2 and 2½.

(B) Live stock driven or hauled in shall be charged at the per capita rate as shown in Section 3, excepting sheep or goats, which shall be 20 cents per head, up to and including 70 head. Above 70 head, up to and including 125 head, shall be considered a single-deck. Above 125 head and up to and including 300 sheep or goats shall be considered a double-deck.

(C) On live stock forwarded from other markets, full commission shall be charged.

(D) In determining the application of the above rates of commission, the official count and classification of the Union Stock Yard & Transit Company shall rule in all cases.

[fol. 953] EXHIBIT 113

Schedule of Live Stock Commission Rates at Sioux City

Sioux City

Schedule of Rates and Charges in Effect in January, 1926, and Still in Effect

Rule XX—Commissions

The following commission will be charged by all members for performing the specific services listed.

Section 1. Single Ownership—Car Load Lots.

Cattle:

20 head or less, $16.00, and 75c. per head for each additional head over 20, with a maximum of $21.00. When car contains less than 14 head drive-in schedule applies.

Calves—Single deck:

50 head or less, $16.00, and 35c. per head for each additional head over 50 head, with a maximum of $21.00.

Double Deck:

70 head or less, $21.00, and 35c. per head for each additional head over 70, with a maximum of $27.00. When car contains less than 40 head drive-in schedule applies.

Hogs—Single deck:

50 head or less, $12.00 and 25c. per head for each additional head over 50, with a maximum of $14.00. An additional charge of 30c. for each full 500 pounds weight over 16,500.

Double deck:

80 head or less, $17.00, and 25c. per head for each additional head over 80, with a maximum of $22.00. An additional charge of 30c. shall be made for each full 500 pounds weight in excess of 24,000 pounds. When car contains less than 40 head, the drive-in schedule applies.

Sheep:

Single deck, $14.00. Double deck, $20.00.

When the car contains less than 50 head, the drive-in schedule applies.

Section 2. Mixed Live Stock-single Owner.

	Per head	Single-deck maximum	Double-deck maximum
Cattle	80c.	$21.00	.....
Calves	35c.	21.00	$27.00
Hogs	25c.	14.00	22.00
Sheep	20c.	14.00	20.00

Minimum of $16.00; maximum of $25.00 for single deck car. Minimum of $21.00; maximum of $27.00 for double deck car. When car contains cattle and calves only minimum of $16.00 and maximum of $23.00 to apply.

Where three species are contained in the car, minimum of $17.00, and maximum of $27.00.

[fol. 954] Selling Commission, Plural Ownership, Carload Lots. Plural Owner Carlots, Sold as Single Ownership

Section 3. When plural ownership carload lots of live stock are handled in the same manner as single ownership cars, that is, not weighed for ownership, marks, brands, or other identification, and not prorated, but handled for market grades and classes only, the single ownership schedule shall apply.

Plural Owner Carlots, Handled for Ownership, Marks, Brands, or Other Identification

When carloads of live stock require prorating, separate sorting, selling or weighing for ownership, marks, brands or other identification, or at the request of shipper, the following rates shall apply:

Unmixed Cars

		Single deck		Double deck	
	Per head	Min'm	Max'm	Min'm	Max'm
Cattle	80c.	$17.00	$21.00	.....	.....
Calves	35c.	17.00	21.00	$23.00	$28.00
Hogs	25c.	13.00	15.00	18.00	23.00
Sheep	20c.	14.00	16.00	20.00	22.00

Mixed Cars

Section 4. Two or more Species, Plural Ownership.

	Per head	Single deck maximum	Double deck maximum
Cattle	80c.	$21.00	.....
Calves	35c.	21.00	$24.00
Hogs	25c.	15.00	23.00
Sheep	20c.	16.00	22.00

Minimum of $16.00 and maximum of $25.00 for single deck car. Minimum of $21.00 and maximum of $28.00 for double deck car.

When car contains cattle and calves only, a minimum of $17.00 and maximum of $24.00 shall apply.

When car contains three species of live stock a minimum of $18.00 and a maximum of $28.00 shall apply.

Extra Services

Drafts:

(a) Single Ownership.—When requested or necessary to grade or sort carlots of live stock of single ownership into market grades and classes, a charge of 15c. shall be made for each draft over three drafts per deck; each draft to be represented by a separate scale ticket. Maximum charge $2.00.

(b) Plural Ownership.—When requested or necessary to grade or sort carlots of live stock of plural ownership, market grades and classes, brands, marks or other identification, a charge of 15c. per draft shall be made for each draft over three per deck, each draft to be represented by a separate scale ticket. Maximum charge $3.00.

Prorating:

When prorating is done a charge of 25c. for each owner shall be made, with a minimum charge of $1.00 per car for this service. Maximum charge $2.50 per car.

Individual Account Sales:

When individual statements are issued, a charge of 5c. [fol. 955] extra shall be made for each statement.

Live Stock Driven or Hauled In

Section 6. The following per head charges shall apply: Cattle, 80c.; calves, 40c.; hogs, 25c.; sheep, 20c.

Charges for live stock driven in for any one owner on any one day shall be limited by the following maxima:

Cattle, 22,000 pounds or under	$21.00
Calves, 16,000 pounds or under	21.00
Hogs, 16,500 pounds or under	14.00
Hogs, 23,000 pounds or under	22.00
Sheep or Goats, 12,000 pounds or under	14.00
Sheep or Goats, 18,000 pounds or under	20.00

[fol. 956] EXHIBIT 114

Schedule of Live Stock Commission Rates at Denver

Denver

Section 1

Single Ownership—Carload Lots

Cattle—20 head or less, $15.00 and 65 cents per head for each additional head over 20 head, with a maximum of $19.00. When car contains less than 14 head, the "drive-in" schedule applies.

Calves (Single Deck)—50 head or less, $15.00 and 30 cents per head for each additional head over 50 head, with a maximum of $20.00

Calves (Double Deck)—70 head or less, $21.00 and 30 cents per head for each additional head over 70 head, with a maximum of $26.00. When car contains less than 40 head, the "drive in" schedule applies.

Hogs (Single Deck)—50 head or less $12.00 and 15 cents per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30 cents shall be made for each full 500 pounds weight over 17,000 pounds.

Hogs (Double Deck)—80 head or less $17.00 and 15 cents per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30 cents shall be made for each full 500 pounds weight over 27,000 pounds.

When a car contains less than 40 head the "drive in" schedule applies.

Sheep (Single Deck)—$14.00; double deck $20.00. When a car contains less than 40 head, the "drive in" schedule applies.

Section 2

Mixed Live Stock

Cattle—75 cents per head. Single deck, maximum $19.00.

Calves—35 cents per head. Single deck, maximum $20.00; double deck, maximum $26.00.

Hogs—25 cents per head. Single deck, maximum $14.00; double deck, maximum $22.00.

Sheep—20 cents per head. Single deck, maximum $14.00; double deck, maximum $20.00.

Minimum of $15.00 and maximum of $25.00, on single deck car. Minimum of $20.00, and maximum of $28.00 on double deck car. When a car contains cattle and calves only, the minimum shall be $15.00 and the maximum $22.00.

Section 3

Selling Commission—Plural Ownership—Carload Lots

Plural Owner Car Lots—Sold as Single Ownership

When plural ownership car load lots of livestock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

[fol. 957] Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification

When car loads of live stock require prorating, separate sorting, selling or weighing for ownership, marks, brands, or other identification, or at request of shippers, the following rates shall apply:

Unmixed Cars

Cattle—75 cents per head. Single deck, minimum $16.00, maximum $20.00.

Calves—35 cents per head. Single deck, minimum $16.00, maximum $21.00; double deck, minimum $22.00, maximum $27.00.

Hogs—25 cents per head. Single deck, minimum $13.00, maximum $15.00; double deck, minimum $18.00, maximum $23.00.

Sheep—20 cents per head. Singl*d* deck, minimum $14.00, maximum $16.00; double deck, minimum $20.00, maximum $22.00.

Mixed Cars

Cattle—75 cents per head. Single deck maximum $20.00.

Calves—35 cents per head. Single deck maximum $21.00; double deck, maximum $27.00.

Hogs—25 cents per head. Single deck, maximum $15.00; double deck maximum $23.00.

Sheep—20 cents per head. Single deck, maximum $16.00; double deck, maximum $22.00.

Minimum of $16.00, and maximum of $25.00, on single deck car. Minimum of $21.00 *of $21.00,* and maximum of $28.00, on double deck car. When a car contains cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership car loads.

[fol. 958] Exhibit 115

Schedule of Live Stock Commission Rates at Kansas City

Kansas City

Schedule of Rates, Tariff No. 2, in Effect January 1, 1926, and Still in Effect

Rule XVI

Schedule of Commissions

The commission for selling or purchasing live stock shall be:

For Selling

Single Ownership Cattle:

Sec. 1. Single Ownership—Carload Lots—20 head or less $15.00 and 65c per head for each additional head over 20 head, with maximum of $19.00.

When car contains less than 14 head the "Drive-in" schedule applies.

Calves:

Single-deck—50 head or less $15.00, and 30c per head for each additional head over 50 head, with a maximum of $20.00.

Double-deck—70 head or less $21.00 and 30c per head for each additional head over 70, with a maximum of $26.00.

When car contains less than 40 head, the "drive-in" schedule applies.

Hogs:

Single-deck—50 head or less $12.00, and 15c per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30c shall be made for each full 500 pounds weight over 17,000 pounds.

Double-deck—80 head or less $17.00, and 15c per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30c shall be made for each full 500 pounds weight over 27,000 pounds.

When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep:

Single-deck $14.00. Double-deck $20.00. When a car contains less than 50 head, the "drive-in" schedule applies.

Sec. 2. Mixed Live Stock—

Mixed Live Stock:

	Each	S. D. max.	D. D. max.
Cattle	75c.	$19.00	.....
Calves	35c.	20.00	$26.00
Hogs	25c.	14.00	22.00
Sheep	20c.	14.00	20.00

Minimum $15.00, and maximum $25.00, on single-deck car.

Minimum $20.00, and maximum $28.00, on double-deck car.

Cattle and Calves Only:

When a car contains cattle and calves only, minimum $15.00 and maximum $22.00.

"Second" Cattle:

"Second" Cattle, 35c per head.

"Second" Calves:

"Second" calves, 20c per head.

[fol. 959] "Second" Hogs:

"Second" hogs, 40c per thousand pounds, not exceeding 10c per head.

"Second Sheep:

"Second" sheep, 12½c per head; 56-125 head one-half single-deck commission; 126-250 head one-half double-deck commission.

Plural Owner Sold as Single Ownership:

Sec. 3. Plural Owner Car Lots—Sold as Single Ownership.—When plural owner carload lots of live stock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Identification:

Plural Owner Car Lots Handled for Ownership Marks, Brands or Other Identification.—When car loads of live stock require prorating, separate sorting, selling or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply:

Unmixed Cars

Unmixed Cars:

		S. D.		D. D.	
	Per head	Min.	Max.	Min.	Max.
Cattle	75c.	$16 00	$20 00	.....	.....
Calves	35c.	16 00	21 00	$22 00	$27 00
Hogs	25c.	13 00	15 00	18 00	23 00
Sheep	20c.	14 00	16 00	20 00	22 00

Mixed Cars

Mixed Cars:

		S. D.		D. D.	
	Per head	Min.	Max.	Min.	Max.
Cattle	75c.	.....	$20 00	.....	.....
Calves	35c.	.....	21 00	.....	$27 00
Hogs	25c.	.....	15 00	.....	23 00
Sheep	20c.	.....	16 00	.....	22 00

Minimum $16.00, and maximum $25.00, on single-deck car.

Minimum $21.00, and maximum $28.00, on double-deck car.

When a car contains cattle and calves only, minimum $16.00 and maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Sec. 4. Stock Driven or Hauled In.—

"Drive-ins:"

Cattle ..... 75c. each

(On 20 head or over, carload rates apply, including surcharge of 65c per head for each additional head over 20 head, with maximum of $19.00 for 30 head or less. Excess over 30 head at 65c each.)

Calves ..... 35c. each

(50 head or over carload rates, including surcharge of 30c for each additional head, apply. Maximum single-deck

rate to apply to 70 head or less, with excess at 30c per head.)

[fol. 960]

Hogs ..... 30c. each

(Over 17,000 pounds surcharge apply. 50 hogs, carload rate.)

Sheep or goats ..... 25c. each

(56-125 head, single-deck rate; over 125-250, double-deck rate.)

[fol. 961] EXHIBIT 116

Schedule of Live Stock Commission Rates at St. Joseph

St. Joseph

Schedule of Rates and Charges in Effect in January, 1926, and Still in Effect

Rule XI

Application and Charges

Selling Commissions Effective September 15, 1923. Amended May 25, 1925

Section 1-A. Single Ownership—Carload Lots.—

Cattle.—20 head or less, $15.00; and 65c per head for each additional head over 20 head, with a maximum of $19.00. When car contains less than 14 head, the "drive-in" schedule applies.

Calves.—Single Deck: 50 head or less, $15.00; and 30c per head for each additional head over 50 head, with a maximum of $20.00. Double-deck; 70 head or less, $21.00; and 30c per head for each additional head over 70 head, with a maximum of $26.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs.—Single Deck: 50 head or less, $12.00; and 15c per head for each additional head over 50 head, with a

maximum of $14.00. An additional charge of 30c shall be made for each full 500 pounds weight over 17,000 pounds. Double Deck: 80 head or less, $17.00; and 15c per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30c shall be made for each full 500 pounds weight over 27,000 pounds. When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single Deck—$14.00. Double Deck $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Mixed Live Stock

	Per head	Single-deck maximum	Double-deck maximum
Cattle	75c.	$19.00	.....
Calves	35c.	20.00	$26.00
Hogs	25c.	14.00	22.00
Sheep	20c.	14.00	20.00

Maximum charge of $25.00 on single-deck car.

Maximum charge of $28.00 on double-deck car.

When a car contains cattle and calves only, the maximum charge shall be $22.00.

Section 1-B. Plural Ownership—Carload Lots.—

Plural Owner Car Lots—Sold as Single Ownership.—When plural ownership car load lots of live stock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

[fol. 962] Plural Owner Car Lots Handled for Ownership, Marks, Brands or Other Identification.—When car loads of live stock require pro-rating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply:

Unmixed Cars

		Single-deck		Double-deck	
	Per head	Min.	Max.	Min.	Max.
Cattle	75c.	$16.00	$20.00	.....	.....
Calves	35c.	16.00	21.00	$22.00	$27.00
Hogs	25c.	13.00	15.00	18.00	23.00
Sheep	20c.	14.00	16.00	20.00	22.00

Mixed Cars

	Per head	Single-deck maximum	Double-deck maximum
Cattle	75c.	$20.00	.....
Calves	35c.	21.00	$27.00
Hogs	25c.	15.00	23.00
Sheep	20c.	16.00	22.00

Maximum charge of $25.00 on single-deck car.

Maximum charge of $28.00 on double-deck car.

When a car contains cattle and calves only, the maximum charge shall be $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Section 1-C. Stock Driven on Hauled In.—

Cattle.—75c. per head.

Calves.—40c. per head.

Hogs.—25c. per head up to 48 head; 48 to 65 head, carload rate applies. The per head rate applies on all over 65 head until maximum is again reached.

Sheep or Goats.—20c. per head up to 70 head; 70 to 140 head shall be considered a single deck and carload rate shall apply; 160 to 280 head shall be considered a double-deck, and the double-deck rate shall apply. Then 20c per head until the maximum is again reached.

[fol. 963] EXHIBIT 117

Letter, Secretary of Agriculture to Attorney General estimating reduction of commissions chargeable as between Tariff No. 2 and the rates fixed in the Secretary's order at a total of $341.093. The difference is estimated for each firm and is itemized as to cattle, hogs, sheep and mixed shipments.

EXHIBIT 118

Computation Showing Results of Application of Secretary's Order to Tagg Brothers & Moorhead, March, 1926, to March, 1927

847. Equity

Comparative Statement

Month	No. Cars	Expense	Schedule No. 2 Commissions	Schedule No. 2 Gain	Schedule No. 2 Loss	Secretary's Order Commissions	Secretary's Order Gain	Secretary's Order Loss
1926.								
April	324	7,159.80	6,621.28	.....	538.52	5,809.15	.....	1,350.65
May	250	7,032.90	4,915.84	.....	2,117.06	5,809.15	.....	2,742.06
June	388	7,245.71	7,785.12	539.41	.....	6,815.12	.....	430.59
July	321	7,095.84	6,214.32	.....	881.52	5,412.32	.....	1,683.52
Aug.	457	8,128.41	9,188.94	1,060.53	.....	8,046.94	.....	81.47
Sept.	551	7,782.35	10,903.81	3,121.46	.....	9,526.81	1,744.46	.....
Oct.	368	7,218.20	7,400.18	181.98	.....	6,480.18	.....	738.02
Nov.	285	7,309.75	5,849.94	.....	1,459.81	5,137.94	.....	2,171.81
Dec.	342	7,984.27	6,797.75	.....	1,186.52	5,942.75	.....	2,041.52
1927.								
Jan.	377	6,807.29	7,113.27	305.98	.....	6,171.27	.....	636.02
Feb.	375	6,042.54	7,228.14	1,185.60	.....	6,291.14	248.60	.....
Mar.	408	6,388.96	7,919.34	1,530.38	.....	6,899.34	510.38	.....
	4,446	86,196.02	87,937.93	7,925.34	6,183.43	76,823.80	2,503.44	11,875.66

Net Gain Schedule No. 2 ..... $1,741.91
Net Loss Secretary's Order 9,372.22

Advance in Yard Traders not included.

Exhibit 118. J. M. W.

Endorsed: Filed Jul. 13, 1927. R. C. Hoyt, Clerk.

[fols. 964 & 965] EXHIBIT 119

Computation of Results of Application of Secretary's Order to Laverty Brothers, April 1, 1926, to March 31, 1927

Number of Cars of Live Stock Handled from Apr. 1, 1926, to March 31, 1927

Number of Cars R. R.		1,673
Number of cars trucked in		166
Number of cars of cattle bought		240
Number of cars of seconds sold		215
Total		2,294
Total commissions for selling	26,014.02	
	9,531.74	
	35,545.76	
	330.01	
		35,875.77
Buying commissions	2,814.70	
	915.90	
		3,730.60
		39,606.37
Total expenses		32,981.82
		6,624.55
Commissions under Secretary's order		34,748.45
Total Expenses		32,981.82
Total profit under Secy's order		1,766.63

Salaries

1 Cattle Salesman	4,800.00
1 Cattle Salesman	4,800.00
1 Hog Salesman	2,760.00
1 Order Buyer	4,360.57
1 Sheepman	91.40
	16,811.98

[fol. 966] EXHIBIT 120

Schedule Commission Rates, Omaha Grain Exchange

"Non-members Rates

Wheat.—One per cent of selling price; maximum 2 cents per bushel; minimum 1½ cents per bushel. Rye, Barley, Ear Corn, Snapped Corn, 1 per cent of selling price; maximum 1½ cents per bushel, minimum 1 cent per bushel. Screenings, 1 per cent of selling price; maximum 2 cents per bushel, minimum 1 cent per bushel. Shelled Corn, 1 per cent of selling price; maximum 1 cent per bushel, minimum ¾ cent per bushel. Oats, 1 per cent of selling price, maximum 1 cent per bushel, minimum ½ cent per bushel.

"Future Delivery.—Commissions for buying and selling for future delivery, ⅛ cent per bushel. Where the actual grain is delivered on future contracts, the regular commission on consignments will be charged.

"Member Rates.—Wheat, ¾ per cent of selling price; maximum 1½ cents, minimum ¾ cent per bushel. Rye, Barley, Ear Corn, Snapped Corn, ¾ per cent of selling price, maximum 1⅜ cents, minimum ¾ cent per bushel.

Screenings, ¾ per cent of selling price; maximum 1½ cents, minimum ¾ cent per bushel. Shelled Corn, ¾ per cent of selling price, maximum ¾ cents, minimum ½ cent per bushel. Oats, ¾ per cent of selling price, maximum ¾ cent, minimum ⅜ cent per bushel.

Provided that on all shipments of incoming grain, seeds or grain products on which the original receiver has performed a service to the shipper in connection with the shipment, by offering for sale, submitting of bids, resampling or any other act which is a part of the general service of receiving and selling, and said member is thereafter instructed to turn said grain, seeds or grain products to another party, or to divert the shipment to some other point or to place in storage; the said member shall charge to the party shipping said grain, as remuneration for the services performed, one-half of the minimum commissions specified above, together with interest on the money advanced at the current rate as provided in Regulation 14 of Article 8 from the date of said advancement until reimbursement."

[fol. 967] EXHIBIT 121

Schedule Commission Rates, Omaha Real Estate Board

"City Real Estate and Acreage, Improved and Unimproved.—The regular commission on all sales of improved and unimproved city property and acreage shall be five per cent on all sales up to $10,000 in amount, and on sales exceeding $10,000 or more, the commission shall be five per cent on the first $10,000 and 2½% on all amounts in excess of $10,000; provided that $50 shall be the minimum charge on sales of vacant city property and acreage, and that $100 shall be the minimum charge on sales of improved city property and acreage.

* * * * * * *

"4. Farm Lands.—On sales of farm lands, the commission charged shall be the same as that charged for the sale of improved city property and acreage.

* * * * * * *

"Curing Titles

"8. Work in fixing up incomplete abstracts and curing defects of title belongs to the attorneys of the parties, and should be performed by them, but if such services are rendered by realtors, they shall be paid a reasonable compensation therefor, over and above their commission, and in proportion to the time and trouble involved."

EXHIBIT 122

Schedule Actual Earnings of Individual Owners, 1925

[fol. 968] Omaha Live Stock Exchange, Omaha, Nebraska

Income to Owners, Year 1925

Owner	Firm	Income per owner
W. F. Vavinger	Cox-Jones Commission Co	$22,478.03
Thos. H. Lindley	Lindley-Cahow Commission Co	21,866.51
E. W. Cahow	Lindley-Cahow Commission Co	19,822.09
W. T. Cox	Cox-Jones Commission Co	16,639.01
L. Jones	Bowles Live Stock Commission Co	16,087.99
W. Davidson	Bowles Live Stock Commission Co	16,087.99
A. E. Rogers	Omaha Live Stock Commission Co	15,074.07

Income to Owners, Year 1925—Continued

Owner	Firm	Income per Owner
D. C. Johnson	Mutual Live Stock Commission Co	14,758.33
J. T. Sullivan	Mutual Live Stock Commission Co	14,758.32
H. H. Roberts	Roberts Bros. & Rose	12,700.70
C. L. Peterson	Great Western Commission Co	12,612.93
J. O. Alsworth	Great Western Commission Co	12,612.92
W. W. Buchanan	Alex G. Buchanan & Son	12,343.06
C. F. Cox	Inter-State Live Stock Commission Co	11,864.56
R. Reynolds	Inter-State Live Stock Commission Co	11,864.56
E. A. Rose	Roberts Bros. & Rose	11,800.70
R. M. Laverty	Laverty Bros	11,074.78
Eugene P. Melady	Melady Bros	10,358.01
John Ralston	John Ralston Commission Co	10,197.69
W. F. Denny	W. F. Denny & Co	9,832.37
John Smith	Wm. R. Smith & Son	9,421.81
M. F. Guilfoyle	Corn Belt Commission Co	8,964.20
N. R. Bryson	Bryson Bros	8,634.10
W. B. Tagg	Tagg Bros. & Moorhead	8,106.18
A. W. Tagg	Tagg Bros. & Moorhead	7,573.80
W. C. Lyman	Tagg Bros. & Moorhead	7,573.80
T. A. Jackson	Jackson Live Stock Co	7,101.73
John F. Roberts	Roberts Bros. & Rose	7,600.70
A. E. Anderson	Tagg Bros. & Moorhead	6,973.80
M. C. Wilkerson	Tagg Bros. & Moorhead	6,973.80
T. H. Bryson	Bryson Bros	6,756.06
Joe McClenaghan	Record Live Stock Commission Co	6,690.00
Will H. Woods	Wood-Oswald Co	6,189.62
Allen H. Dudley	Allen Dudley & Co	6,173.48
T. J. Donahue	Donahue Bros., Inc	6,167.96
Jas. J. Donahue	Inter-State Live Stock Commission Co	6,154.84
A. J. Randall	Randall & Co	6,133.27
T. W. Farris	Farris-Marcy Co	6,101.11
Cliff McClenaghan	Record Live Stock Commission Co	6,090.00
L. J. Hough	Omaha Live Stock Commission Co	6,040.80
Chas. Burke	Burke-Rickly Co	6,001.01
J. Boetel	Great Western Commission Co	5,704.95
C. P. Dudley	Allen Dudley & Co	5,573.49
[fol. 969]		
Clyde Kells	Fonda-Kells & Christie Co	5,565.45
E. Munson	Wood Bros	5,529.29
Leo Ryan	Donahue Bros	5,516.19
C. W. Allyn	Lindley-Cahow Commission Co	5,477.15
H. W. Johnson	Tagg Bros. & Moorhead	5,473.80
J. C. Cunningham	Security Live Stock Commission Co	5,415.51
Geo. E. Parker	Triangle Live Stock Commission Co	5,326.34
C. J. Horn	Triangle Live Stock Commission Co	5,326.33
Jno. O. Willison	Triangle Live Stock Commission Co	5,326.33
Lou Bick	Lou Bick Commission Co	5,169.99
A. J. Adams	Lou Bick Commission Co	5,169.99
T. H. Fonda, Jr	Fonda-Kells & Christie Co	5,130.91
B. F. Roth	Wood Bros	5,014.65
Frank E. Bliss	Bliss & Son	5,012.16
G. W. Greene	Greene, Madden & Co	4,989.28
W. Madden	Greene, Madden & Co	4,989.28
Chas. Hammer	Donahue Bros., Inc	4,979.58
C. W. Boetel	Boetel Live Stock Commission Co	4,799.97
C. C. Johnson	Wood Bros	4,757.32
M. S. Morrill	Great Western Commission Co	4,704.99
Webster Mills	Burke-Rickly Co	4,500.76
E. H. Burke	Burke-Rickly Co	4,500.76
J. C. Christie	Fonda-Kells & Christie Co	4,440.46
C. C. Clifton	Clifton Commission Co	4,408.20

Income to Owners, Year 1925—Continued

Owner	Firm	Income per owner
Geo. E. Martin	Martin Bros. & Co	4,318.24
F. C. Bliss	Bliss, Wellman & Hopkins	4,233.37
F. A. Wellman	Bliss, Wellman & Hopkins	4,233.37
C. H. Hopkins	Bliss, Wellman & Hopkins	4,233.37
H. J. Oswald	Wood-Oswald Co	4,189.62
W. W. Rapp	Lee Live Stock Commission Co	4,181.27
T. J. Stolinski	Dworak-Stolinski Commission Co	4,158.34
Frank Dworak	Dworak-Stolinski Commission Co	4,158.33
Claude Clifton	Clifton Commission Co	4,108.20
Byron Clow	Byron Clow Co	3,877.39
Robert Ihnen	McAdams Bros. & Ihnen	3,864.87
Wm. H. McAdams	McAdams Bros. & Ihnen	3,864.86
J. R. McPhail (5 mo.)	Inter-State Live Stock Commission Co	3,719.14
H. W. Moberly	Lee Live Stock Commission Co	3,585.56
E. J. Wright	Tagg Bros. & Moorhead	3,526.54
Robert A. Gross	Randall & Co	3,421.63
J. N. Laird, Sr	Laird Live Stock Commission Co	3,394.05
Chas. Wood	Wood Bros	3,345.21
H. A. Rogers	Omaha Live Stock Commission Co	3,263.60
Wm. Frazier	Frazier-Johnson Co	3,192.42
Mat Malone	Snyder-Malone-Coffman Co	3,119.05
Mr. Gant [fol. 970]	Gant Live Stock Commission Co	3,087.44
John J. Robb	Randall & Co	3,066.64
Henry Dolezel	Globe Live Stock Commission Co	3,064.35
John Martin (9 mo.)	Martin Bros. & Co	2,949.51
James Martin (9 mo.)	Martin Bros. & Co	2,949.51
G. J. Ingwerson	Ingwerson-Daugherty	2,797.88
R. B. Daugherty	Ingwerson-Daugherty	2,772.89
T. B. McEntee	Randall & Co	2,711.64
J. C. Eastes	Wm. R. Smith & Son	2,421.81
F. M. Young	Byron Clow Co	2,292.47
Oscar Allen	Snyder-Malone-Coffman Co	2,239.68*
P. H. Winn	Winn Bros	1,918.21
J. P. Winn	Winn Bros	1,918.21
W. J. Dearth	Geo. M. Wood Sheep Commission Co	1,932.72
J. N. Williams	Williams & Sons	1,803.25
L. E. Williams	Williams & Sons	1,803.24
B. Ward	Ward-Murphy Live Stock Commission Co	1,471.43
M. J. Murphy	Ward-Murphy Live Stock Commission Co	1,471.43
Frank G. Roberts (9 mo.)	Geo. M. Wood Sheep Commission Co	1,303.14
Samuel Coffman	Central Live Stock Commission Co	1,052.15
S. R. Cox (3 mo.)	Cox-Jones Commission Co	600.00
A. A. Daly	L. E. Roberts & Co	588.64
Brad Hickox	Martin Bros. & Co	497.45
A. D. Majors	Martin Bros. & Co	397.45
M. S. Burmeister	Martin Bros. & Co	372.65
R. M. Burnes	Martin Bros. & Co	314.70
A. B. Moorhead	Tagg Bros. & Moorhead	396.45
H. G. Kiddoo	Byers Bros. & Co	150.77
M. G. Sherman	Byers Bros. & Co	90.46
968 Other Stockholders	Byers Bros. & Co	7,297.43
5 Partners and 2 Co-Partners	John Clay & Co	7,819.74
A. Wertheimer	Rosenbaum Bros. & Co	3,509.98*
E. H. Ingwersen	Rosenbaum Bros. & Co	3,239.46*
J. H. Ingwersen	Rosenbaum Bros. & Co	1,369.75*
D. C. Mosier	Rosenbaum Bros. & Co	1,027.32*
D. R. Ingwersen	Rosenbaum Bros. & Co	428.05*
C. J. Ingwersen	Rosenbaum Bros. & Co	3.42*
A. C. Borroff	Rosenbaum Bros. & Co	6.85*
E. G. Smith	Rosenbaum Bros. & Co	3.42*
H. K. Wertheimer	Rosenbaum Bros. & Co	684.88*
Books Sent to Chicago	Chas. O. Robinson & Co	10,827.86*
Jacob Jacobs	Jacob Jacobs Live Stock Commission Co	978.09*

[*Red in copy.]

[fol. 971]

Summary

No. of owners					Total income
2	Over	$20,000.00			$44,344.54
1	From	19,000.00	to	$20,000.00	19,822.09
3		16,000.00		17,000.00	48,814.99
1		15,000.00		16,000.00	15,074.07
2		14,000.00		15,000.00	29,516.65
4		12,000.00		13,000.00	50,269.61
4		11,000.00		12,000.00	46,604.60
2		10,000.00		11,000.00	20,555.70
2		9,000.00		10,000.00	19,254.68
3		8,000.00		9,000.00	25,704.48
4		7,000.00		8,000.00	29,850.03
13		6,000.00		7,000.00	82,445.75
16		5,000.00		6,000.00	85,732.53
19		4,000.00		5,000.00	84,884.71
15		3,000.00		4,000.00	51,392.75
8		2,000.00		3,000.00	21,135.39
9		1,000.00		2,000.00	14,673.78
9	Less than	1,000.00			3,408.57
	968 Shares of Stock, Byers & Co				7,297.43
	5 Partners, 2 Co-Partners, John Clay & Co				7,819.74
	Chas. O. Robinson & Co. books sent to Chicago				10,827.86*
10	Loss				11,251.22*
Total Number of Owners—127.					
28 Owners with an Average Income of					$12,493.26
63 Owners with an Average Income of					4,832.63
26 Owners with an Average Income of					1,508.37
10 Owners with an Average Loss of					1,125.12*

[fol. 972]

EXHIBIT 123

Schedule of Earnings Individual Owners under Secretary of Agriculture's Order

[fol. 973]

Omaha Live Stock Exchange, Omaha, Nebraska

Income to Owners, Year 1925

This schedule is compiled using the Income that would have been received if the Secretary of Agriculture's Order had been in effect, with the adjusted expense excluding interest on the investment, and using the owners' actual selling and buying salaries instead of the 5–5 and 4 basis.

Owner	Firm	Income per owner
W. F. Vavinger	Cox-Jones Commission Co	$15,179.85
Thos. H. Lindley	Lindley-Cahow Commission Co	15,025.59
E. W. Cahow	Lindley-Cahow Commission Co	14,121.33
D. C. Johnson	Mutual Live Stock Commission Co	13,276.94
J. T. Sullivan	Mutual Live Stock Commission Co	13,276.93
W. T. Cox	Cox-Jones Commission Co	12,989.93
W. W. Buchanan	Alex G. Buchanan & Son	12,665.39
L. Jones	Bowles Live Stock Commission Co	11,522.93
W. Davidson	Bowles Live Stock Commission Co	11,522.93
A. E. Rogers	Omaha Live Stock Commission Co	11,453.28
C. F. Cox	Inter-State Live Stock Commission Co	10,084.17
R. Reynolds	Inter-State Live Stock Commission Co	10,084.17
H. H. Roberts	Roberts Bros. & Rose	9,523.26
R. M. Laverty	Laverty Bros	8,998.74
C. L. Peterson	Great Western Commission Co	8,630.69
J. O. Alsworth	Great Western Commission Co	8,630.69
E. A. Rose	Roberts Bros. & Rose	8,623.25
Joe McClenaghan	Record Live Stock Commission Co	8,349.20

[*Red in copy.]

Summary—Continued

Owner	Firm	Income per owner
W. B. Tagg	Tagg Bros. & Moorhead	7,926.99
W. F. Denny	W. F. Denny & Co	7,650.52
Cliff McClenaghan	Record Live Stock Commission Co	7,749.19
John Smith	Wm. R. Smith & Co	7,518.26
A. W. Tagg	Tagg Bros. & Moorhead	7,499.88
W. C. Lyman	Tagg Bros. & Moorhead	7,499.88
A. E. Anderson	Tagg Bros. & Moorhead	6,899.88
M. C. Wilkerson	Tagg Bros. & Moorhead	6,899.88
Allen H. Dudley	Allen Dudley & Co	6,643.66
N. R. Bryson	Bryson Bros	6,578.39
M. F. Guilfoyle	Corn Belt Commission Co	6,405.04
Chas. Burke	Burke-Rickly Co	6,402.38
John Ralston	John Ralston Commission Co	6,329.68
Chester P. Dudley	Allen Dudley & Co	6,043.65
T. J. Donahue	Donahue Bros., Inc	6,009.08
Geo. E. Martin	Martin Bros. & Co	5,683.46
Lou Bick	Lou Bick Commission Co	5,605.19
A. J. Adams	Lou Bick Commission Co	5,605.18
James J. Donahue	Inter-State Live Stock Commission Co	5,561.38
T. W. Farris	Farris-Marcy Co	5,545.14
H. W. Johnson	Tagg Bros. & Moorhead	5,399.88
T. H. Bryson	Bryson Bros	5,385.59
[fol. 974]		
C. W. Allyn	Lindley-Cahow Commission Co	5,350.47
L. J. Hough	Omaha Live Stock Commission Co	5,192.17
G. W. Greene	Greene-Madden & Co	5,147.41
W. Madden	Greene-Madden & Co	5,147.41
Webster Mills	Burke-Rickly Co	4,801.78
E. H. Burke	Burke-Rickly Co	4,801.78
A. J. Randall	Randall & Co	4,644.56
Clyde Kells	Fonda-Kells & Christie Co	4,506.25
John Fitz Roberts	Roberts Bros. & Rose	4,423.26
E. C. Johnson	Wood Bros	4,341.48
John Martin	Martin Bros. & Co	4,301.70
James Martin	Martin Bros. & Co	4,301.70
E. W. Boetel	Boetel Live Stock Commission Co	4,233.33
B. F. Roth	Wood Bros	4,182.94
J. Boetel	Great Western Commission Co	4,156.30
J. C. Cunningham	Security Live Stock Commission Co	4,010.25
Geo. E. Parker	Triangle Live Stock Commission Co	3,946.52
C. J. Horn	Triangle Live Stock Commission Co	3,946.52
John O. Willison	Triangle Live Stock Commission Co	3,946.53
E. Munson	Wood Bros	3,865.89
Frank E. Bliss	Bliss & Son	3,772.56
Eugene P. Melady	Melady Bros	3,738.50
Will H. Woods	Wood-Oswald Co	3,731.44
F. C. Bliss	Bliss, Wellman & Hopkins	3,709.88
F. A. Wellman	Bliss, Wellman & Hopkins	3,709.88
E. H. Hopkins	Bliss, Wellman & Hopkins	3,709.88
H. W. Moberly	Lee Live Stock Commission Co	3,523.54
E. J. Wright	Tagg Bros. & Moorhead	3,481.74
Chas. Hammer	Donahue Bros., Inc	3,390.85
J. C. Christie	Fonda-Kells & Christie Co	3,381.25
Frank Dworak	Dworak-Stolinski Commission Co	3,291.94
F. J. Stolinski	Dworak-Stolinski Commission Co	3,291.93
Wm. H. McAdams	McAdams Bros. & Ihnen	3,181.69
Robert Ihnen	McAdams Bros. & Ihnen	3,181.68
M. S. Morrill	Great Western Commission Co	3,156.33
T. H. Fonda, Jr	Fonda-Kells & Christie Co	3,012.49
H. A. Hough	Omaha Live Stock Commission Co	2,980.73
E. C. Clifton	Clifton Commission Co	2,962.71
Mr. Gant	Gant Live Stock Commission Co	2,799.76

Summary—Continued

Owner	Firm	Income per owner
Claude Clifton	Clifton Commission Co	2,662.70
Robert A. Gross	Randall & Co	2,565.62
Byron Clow	Byron Clow Co	2,550.50
J. R. McPhail	Inter-State Live Stock Commission Co	2,500.00
Leo Ryan	Donahue Bros., Inc	2,497.58
W. W. Rapp	Lee Live Stock Commission Co	2,382.66
[fol. 975]		
John J. Robb	Randall & Co	2,322.28
Matt Malone	Snyder-Malone-Coffman Co	2,230.27
J. N. Laird, Sr	Laird Live Stock Commission Co	2,216.77
T. B. McEntee	Randall & Co	2,078.93
Oscar Allen	Snyder-Malone-Coffman Co	1,943.42
J. N. Williams	Williams & Son	1,880.16
L. E. Williams	" "	1,880.16
F. M. Young	Byron Clow Co	1,850.17
H. J. Oswald	Wood-Oswald Co	1,731.45
G. J. Ingwerson	Ingwerson-Daugherty	1,712.51
R. B. Daugherty	" "	1,687.50
Henry Dolezel	Globe Live Stock Commission Co	1,634.56
P. H. Winn	Winn Bros.	1,532.90
J. P. Winn	" "	1,532.89
W. J. Dearth	Geo. M. Wood Sheep Commission Co	1,386.27
Frank G. Roberts	" " " " " "	1,303.14
Samuel Coffman	Central Live Stock Commission Co	1,052.15
B. Ward	Ward-Murphy Live Stock Commission Co.	1,043.04
M. J. Murphy	" " " " " "	1,043.04
S. R. Cox	Cox-Jones Commission Co	600.00
Wm. Frazier	Frazier-Johnson Co	580.20
J. R. Eastes	Wm. R. Smith & Son	518.26
Brad Hickox	Martin Bros. & Co	502.75
A. D. Majors	" " "	402.75
M. S. Burmeister	" " "	377.54
R. M. Burnes	" " "	318.77
Annis B. Moorhead	Tagg Bros. & Moorhead	318.03
H. G. Kiddoo	Byers Bros. & Co	133.49
M. G. Sherman	" " "	80.10
968 Other Shares of Stock	" " "	6,461.15
Jacob Jacobs	Jacob Jacobs Live Stock Commission Co	1,884.25*
Chas. Wood	Wood Bros	2,060.86*
5 Partners & 2 Co-Partners	John Clay & Co	5,124.76*
Books Sent to Chicago	Chas. O. Robinson & Co	15,420.87*
A. A. Daly	L. E. Roberts & Co	1,234.54*
T. A. Jackson	Jackson Live Stock Co	1,764.46*
A. Wertheimer	Rosenbaum Bros. & Co	4,819.74*
E. H. Ingwersen	" " " "	4,451.38*
J. H. Ingwersen	" " " "	1,882.73*
C. D. Mosier	" " " "	1,411.34*
H. K. Wertheimer	" " " "	941.36*
D. R. Ingwersen	" " " "	585.71*
C. J. Ingwersen	" " " "	5.65*
A. C. Borroff	" " " "	9.88*
E. G. Smith	" " " "	5.65*

[*Red in Copy.]

[fol. 976] Summary

No. of owners			Total income
2	From $15,000.00 to	$16,000.00	$30,205.44
1	14,000.00	15,000.00	14,121.33
2	13,000.00	14,000.00	26,553.87
2	12,000.00	13,000.00	25,655.32
3	11,000.00	12,000.00	34,499.14
2	10,000.00	11,000.00	20,168.34
1	9,000.00	10,000.00	9,523.26
5	8,000.00	9,000.00	43,232.57
6	7,000.00	8,000.00	45,844.72
9	6,000.00	7,000.00	58,211.64
11	5,000.00	6,000.00	59,623.28
12	4,000.00	5,000.00	52,705.33
20	3,000.00	4,000.00	70,971.04
13	2,000.00	3,000.00	32,750.51
15	1,000.00	2,000.00	23,213.36
10	Less than $1,000.00		3,831.89
	968 Shares of Stock, Byers Bros. & Co		6,461.15
	5 Partners, 2 Co-Partners, John Clay & Co		5,124.76*
	Chas. O. Robinson & Co. Books Sent to Chicago		15,420.87*
13	Loss		21,057.55*

Total Number of Owners—127.

24	Owners with an Average Income of	$10,408.50
52	" " " " " "	4,644.45
38	" " " " " "	1,573.57
13	" " " " Loss "	1,619.81*

Endorsed. Filed July 13, 1927. R. C. Hoyt, Clerk.

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fol. 977] EXHIBIT 123-A

Schedule of Earnings Individual Owners under Secretary's Order Excluding Increase to Speculators and Interest on Investment.

Omaha Live Stock Exchange, Omaha, Nebraska

Income to Owners, Year 1925

This schedule is compiled using the income that would have been received if the Secretary of Agriculture's Order had been in effect excepting that portion that allowed for an increase in Dealers & Speculators Commissions, and using the adjusted expense as shown in Schedule 2, except the actual owners' salaries are used in place of the 5-5 and 4 basis.

Owner	Firm	Income per owner
Thos. H. Lindley	Lindley-Cahow Commission Co	$13,450.98
W. F. Bavinger	Cox-Jones Commission Co	13,064.90
E. W. Cahow	Lindley-Cahow Commission Co	12,809.15
W. T. Cox	Cox-Jones Commission Co	11,932.45
D. C. Johnson	Mutual Live Stock Commission Co	10,586.75
J. T. Sullivan	Mutual Live Stock Commission Co	10,586.74
W. W. Buchanan	Alex G. Buchanan & Son	9,439.30
W. Davidson	Mutual Live Stock Commission Co	9,058.59
L. Jones	Mutual Live Stock Commission Co	9,058.58
A. E. Rogers	Omaha Live Stock Commission Co	8,773.79
C. F. Cox	Inter-State Live Stock Commission Co	8,351.07
R. Reynolds	Inter-State Live Stock Commission Co	8,351.07
H. H. Roberts	Roberts Bros. & Rose	8,187.44

[*Red in copy.]

Owner	Firm	Income per owner
Joe McClenaghan	Record Live Stock Commission Co	7,562.75
R. M. Laverty	Laverty Bros	7,414.70
E. A. Rose	Roberts Bros. & Rose	7,287.44
C. L. Peterson	Great Western Commission Co	7,161.73
J. A. Alsworth	Great Western Commission Co	7,161.73
A. W. Tagg	Tagg Bros. & Moorhead	6,971.42
W. C. Lyman	Tagg Bros. & Moorhead	6,971.42
Cliff McClenaghan	Record Live Stock Commission Co	6,962.76
W. F. Denny	W. F. Denny & Co	6,848.89
John Smith	Wm. R. Smith & Co	6,847.09
W. B. Tagg	Tagg Bros. & Moorhead	6,645.86
A. E. Anderson	Tagg Bros. & Moorhead	6,371.42
M. C. Wilkerson	Tagg Bros. & Moorhead	6,371.42
T. J. Donahue	Donahue Bros. Inc	5,957.18
C. W. Allyn	Lindley-Cahow Commission Co	5,321.31
N. R. Bryson	Bryson Bros	5,235.86
Chas. Burke	Burke-Rickly Co	5,067.20
James J. Donahue	Inter-State Live Stock Commission Co	4,983.68
Lou Bick	Lou Bick Commission Co	4,889.27
A. J. Adams	Lou Bick Commission Co	4,889.27
H. W. Johnson	Tagg Bros. & Moorhead	4,871.42
Allen H. Dudley	Allen Dudley & Co	4,715.57
L. J. Hough	Omaha Live Stock Commission Co	4,564.17
T. J. Bryson	Bryson Bros	4,490.57
Geo. E. Martin	Martin Bros. & Co	4,383.25
M. F. Guilfoyle	Corn Belt Commission Co	4,326.64
[fol. 978]		
Clyde Kells	Fonda-Kells & Christie Co	4,321.99
A. J. Randall	Randall & Co	4,135.71
Chester P. Dudley	Allen Dudley & Co	4,114.57
E. C. Johnson	Wood Bros	4,066.07
Webster Mills	Burke-Rickly Co	3,800.39
E. H. Burke	Burke-Rickly Co	3,800.39
E. W. Boetel	Boetel Live Stock Commission Co	3,749.86
G. W. Greene	Greene-Madden & Co	3,740.85
W. Madden	Greene-Madden & Co	3,740.85
B. F. Roth	Wood Bros	3,632.15
J. Boetel	Great Western Commission Co	3,585.04
H. W. Moberly	Lee Live Stock Commission Co	3,506.27
Geo. E. Parker	Triangle Live Stock Commission Co	3,483.35
C. J. Horn	Triangle Live Stock Commission Co	3,483.35
John O. Willison	Triangle Live Stock Commission Co	3,483.34
Frank Dworak	Dworak-Stolinski Commission Co	3,214.24
F. J. Stolinski	Dworak-Stolinski Commission Co	3,214.23
J. C. Christie	Fonda-Kells & Christie Co	3,196.99
E. I. Wright	Tagg Bros. & Moorhead	3,161.45
John Fitz Roberts	Roberts Bros. & Rose	3,087.45
Will H. Woods	Wood-Oswald Co	3,076.74
James Martin	Martin Bros. & Co	3,014.54
John Martin	Martin Bros. & Co	3,014.53
E. J. Clifton	Clifton Commission Co	2,913.37
Chas. Hammer	Donahue Bros., Inc	2,872.04
H. A. Hough	Omaha Live Stock Commission Co	2,771.39
E. Munson	Wood Bros	2,764.29
Frank E. Bliss	Bliss & Son	2,751.28
J. C. Cunningham	Security Live Stock Commission Co	2,731.61
Wm. H. McAdams	McAdams Bros. & Ihnen	2,655.58
Tobert Ihnen	McAdams Bros. & Ihnen	2,655.57
R. H. Fonda, Jr	Fonda-Kells & Christie Co	2,643.98
Claude Clifton	Clifton Commission Co	2,613.36
M. S. Morrill	Great Western Commission Co	2,585.08
F. C. Bliss	Bliss, Wellman & Hopkins	2,537.77

Income to Owners, Year 1925—Continued

Owner	Firm	Income per owner
F. A. Wellman	Bliss, Wellman & Hopkins	2,537.77
E. H. Hopkins	Bliss, Wellman & Hopkins	2,537.76
Mr. Gant	Gant Live Stock Commission Co	2,514.47
J. R. McPhail	Inter-State Live Stock Commission Co	2,500.00
Robt. A. Gross	Randall & Co	2,273.03
Byron Clow	Byron Clow Co	2,259.02
Mat Malone	Snyder-Malone-Coffman Co	2,070.05
John J. Robb	Randall & Co	2,067.85
F. W. Farris	Farris-Marcy Co	2,011.78
[fol. 979]		
Oscar Allen	Snyder-Malone-Coffman Co	1,890.02
W. W. Rapp	Lee Live Stock Commission Co	1,881.59
T. B. McEntee	Randall & Co	1,862.68
J. N. Laird, Sr	Laird Live Stock Commission Co	1,792.18
F. M. Young	Byron-Clow Co	1,753.00
Eugene P. Melady	Melady Bros	1,637.94
G. J. Ingwerson	Ingwerson-Daugherty	1,621.20
R. B. Daugherty	Ingwerson-Daugherty	1,596.20
J. N. Williams	Williams & Son	1,558.76
L. E. Williams	Williams & Son	1,558.76
Leo Ryan	Donahue Bros., Inc	1,511.89
P. H. Winn	Winn Bros	1,501.29
J. P. Winn	Winn Bros	1,501.29
Henry Dolezal	Globe Live Stock Commission Co	1,372.99
Frank G. Roberts	Geo. M. Woods Sheep Commission Co	1,303.14
H. J. Oswald	Wood-Oswald Co	1,076.74
Samuel Coffman	Central Live Stock Commission Co	1,052.15
B. Ward	Ward-Murphy Live Stock Com. Co	1,018.40
M. J. Murphy	Ward-Murphy Live Stock Com. Co	1,018.40
John Ralston	John Ralston Commission Co	609.75
S. R. Cox	Cox-Jones Commission Co	600.00
W. J. Dearth	Geo. M. Woods Sheep Commission Co	525.24
Brad Hickox	Martin Bros. & Co	497.45
A. D. Majors	Martin Bros. & Co	397.45
M. S. Burmeister	Martin Bros. & Co	372.65
R. M. Burnes	Martin Bros. & Co	314.70
H. G. Kiddoo	Byers Bros. Co	41.14
M. G. Sherman	Byers Bros. & Co	24.68
968 Other Shares of Stock	Byers Bros. & Co	1,991.53
Books Sent to Chicago	Chas. O. Robinson & Co	17,544.96*
5 Partners & 2 Co-partners	John Clay & Co	6,664.11*
Chas. Wood	Wood Bros	5,641.04*
A. Wertheimer	Rosenbaum Bros. & Co	5,164.52*
E. H. Ingwersen	Rosenbaum Bros. & Co	4,766.48*
A. A. Daly	L. E. Roberts & Co	2,828.55*
Jacob Jacobs	Jacob Jacobs Live Stock Com. Co	2,839.45*
T. A. Jackson	Jackson Live Stock Commission Co	2,267.75*
J. H. Ingwersen	Rosenbaum Bros. & Co	2,015.42*
D. C. Mosier	Rosenbaum Bros. & Co	1,511.57*
H. K. Wertheimer	Rosenbaum Bros. & Co	1,007.71*
D. R. Ingwersen	Rosenbaum Bros. & Co	629.82*
A. B. Moorhead	Tagg Bros. & Moorhead	242.44*
[fol. 980]		
J. R. Eastes	W. R. Smith & Co	152.91*
A. C. Borroff	Rosenbaum Bros. & Co	10.08*
C. J. Ingwersen	Rosenbaum Bros. & Co	5.04*
E. G. Smith	Rosenbaum Bros. & Co	5.04*
Wm. Frazier	Frazier-Johnson Co	2.25*

[*Red in copy.]

Summary

No. of owners			Total income
2	From $13,000.00 to	$14,000.00	$26,515.88
1	12,000.00	13,000.00	12,809.15
1	11,000.00	12,000.00	11,932.45
2	10,000.00	11,000.00	21,173.49
3	9,000.00	10,000.00	27,556.47
4	8,000.00	9,000.00	33,663.37
5	7,000.00	8,000.00	36,588.35
8	6,000.00	7,000.00	53,990.28
4	5,000.00	6,000.00	21,581.55
13	4,000.00	5,000.00	58,753.18
19	3,000.00	4,000.00	64,986.01
21	2,000.00	3,000.00	53,267.05
19	1,000.00	2,000.00	28,508.62
9	Less than $1,000.00		3,383.06
	968 Shares of Stock, Byers Bros. & Co		1,991.53
	5 Partners, 2 Co-Partners, John Clay & Co		6,664.11*
	Chas. O. Robinson & Co., books sent to Chicago		17,544.96*
16	Loss		29,090.07*

Total Number of Owners—127.

18 Owners with an Average Income of	$9,457.73
44 Owners with an Average Income of	4,529.80
49 Owners with an Average Income of	1,737.93
16 Owners with an Average Loss of	1,818.13*

[*Red in copy.]

[fol. 981] EXHIBIT 124

Statement of Volume Applying Secretary's Tariff, Year Ending December 31, 1925

Selling:	Head	Conversion rate	Cars
Straight Cars:			
Cattle & Calves	1,390,916	...	52,575
Hogs	2,143,053	...	29,342
Sheep	2,057,559	...	8,409
Mixed Cars:			
Cattle)	(		
Calves)	(8,609,065	...	7,837
Hogs	347,896	...	....
Sheep	14,245	...	....
Drive-ins & Truck-ins:			
Cattle	66,655	27	2,469
Calves	22,177	60	369
Hogs	391,298	70	5,590
Sheep	118,629	225	527
Dealers & Speculators:			
Cattle	176,866	27	6,551
Calves	3,868	60	64
Hogs	425,734	70	6,082
Sheep	32,973	225	146
Total Selling	7,272,774	...	119,959
Buying:			
Straight Cars:			
Cattle & Calves	195,310	...	6,025
Hogs	23,722	...	235
Sheep	462,627	...	1,713
Mixed Cars:			
Cattle	32		
Calves	2	...	2
Hogs	64		

Drive-outs & Truck-outs:	Head	Conversion rate	Cars
Cattle	9,143	27	339
Calves	1,117	60	19
Hogs	2,365	70	34
Sheep	13,752	225	61
Dealers & Speculators:			
Cattle	5,525	27	205
Calves	36	60	1
Hogs	1,461	70	21
Sheep	689	225	3
Total Buying	715,845	...	8,658
Total Selling & Buying	7,988,619	...	128,617

Endorsed: Filed Jul. 13, 1927. R. C. Hoyt, Clerk.

[fol. 982] EXHIBIT 125

Comparative Statement of Commissions, Year Ended December 31, 1925

Firm No.	Tabulation accepted in Docket #143	Increase, decrease in red	Commissions applying sec. tariff
1	$40,934.58	$3,575.48*	$37,359.10
2	20,472.35	1,651.45*	18,820.90
3	27,168.77	595.82*	26,572.95
4	69,218.93	6,769.63*	62,449.30
5	20,319.91	1,505.11*	18,814.80
6	33,865.64	3,836.69*	30,028.95
7	38,692.90	3,789.35*	34,903.55
8	89,903.97	8,385.37*	81,518.60
9	78,208.56	9,308.86*	68,899.70
10	21,315.29	3,089.39*	18,225.90
11	13,904.32	1,759.62*	12,144.70
12	19,216.56	2,097.01*	17,119.55

Comparative Statement of Com.—Continued

Firm No.	Tabulation accepted in Docket #143	Increase, decrease in red	Commissions applying sec. tariff
13	117,732.91	12,647.21*	105,085.70
14	44,542.21	4,440.76*	40,101.45
15	17,817.31	1,361.86*	16,455.45
16	6,789.63	777.98*	6,011.65
17	9,103.69	634.14*	8,469.55
18	115,601.11	13,274.76*	102,326.35
19	31,560.56	1,044.44	1,044.44
20	21,409.19	375.81	21,785.00
21	19,116.43	1,972.78*	17,143.65
22	57,743.88	4,689.33*	53,054.55
23	42,238.51	3,740.06*	38,498.45
24	9,208.37	179.98	9,388.35
25	38,797.57	1,521.92*	37,275.65
26	2,105.40	291.05*	1,814.35
27	38,843.35	4,827.70*	34,015.65
28	95,298.18	11,364.83*	83,933.35
29	34,400.74	2,006.94*	32,393.80
30	62,764.36	3,212.76*	59,551.60
31	49,183.71	4,769.41*	44,414.30
32	11,288.58	22.68*	11,265.90
33	18,649.70	1,242.90*	17,406.80
34	56,882.07	691.07*	56,191.00
35	24,559.50	2,214.15*	22,345.35
36	4,981.49	301.74*	4,679.75
37	15,394.78	1,104.13*	14,290.65
38	46,327.61	4,185.11*	42,142.50
39	110,985.75	9,913.20*	101,072.55
40	38,812.58	4,145.63*	34,666.95
41	18,881.66	368.94	19,250.60
42	21,873.14	834.46	22,707.60
43	88,929.88	11,153.33*	77,776.55
44	28,712.95	2,740.10*	25,972.85
45	14,781.74	861.24*	13,920.50
46	56,449.13	4,862.38*	51,586.75
47	16,473.78	1,930.23*	14,543.55
48	91,303.51	8,011.76*	83,291.75
49	6,057.45	538.10*	5,519.35
50	6,056.96	657.86*	5,399.10

[*Red in copy.]

Comparative Statement of Com.—Continued

Firm No.	Tabulation accepted in Docket #143	Increase, decrease in red	Commissions applying sec. tariff
51.....	26,818.32	322.98	27,141.30
52.....	31,743.37	2,734.27*	29,009.10
53.....	32,025.60	4,444.25*	27,581.35
54.....	14,953.27	1,223.02*	13,730.25
55.....	8,863.22	926.82*	7,936.40
56.....	41,155.32	5,094.67*	36,060.65
57.....	13,865.80	1,242.00*	12,623.80
58.....	36,833.57	5,157.97*	31,675.60
60.....	13,145.16	1,251.81*	11,983.35
	$2,184,284.78	$191,421.08*	$1,992,863.70

Endorsed: Filed Jul. 13, 1927. R. C. Hoyt, Clerk.

[fol. 983] In United States District Court

[Title omitted]

Notice of Motion to Approve Statement of Evidence—Jan. 31, 1929

To the defendants and their attorneys of record:

You are hereby notified that the plaintiffs have lodged in the office of the Clerk of the District Court of the United States for the District of Nebraska, Omaha Division, a statement of the evidence, together with the objections thereto and the rulings thereon received at the trial of the above cause, and that on Monday the 11th day of February, 1929, at 9:00 o'clock A. M. or as soon thereafter as counsel may be heard the plaintiffs will appear in said court before Hon. J. W. Woodrough, Judge, and pray the court to settle and approve the said statement of the evidence and to order the same made a part of the transcript on appeal of the above cause to the Supreme Court of the United States.

James M. Beck, Francis A. Brogan, Alfred G. Ettick, Anan Raymond, Attorneys for Plaintiffs.

[*Red in copy.]

[fol. 984] STATE OF NEBRASKA,
County of Douglas, ss:

Anan Raymond being first duly sworn deposes and says that he is one of counsel for the plaintiffs in the above cause and that on the 31st day of January, 1929, he served upon the defendants herein notice of lodgment of statement of the evidence by delivering personally unto J. C. Kinsler, United States District Attorney for the District of Nebraska, and counsel of record for the defendants in the above cause, a notice of which the above and foregoing is a true and correct copy.

Anan Raymond.

Subscribed in my presence and sworn to before me this 31st day of January, 1929. R. C. Hoyt, Clerk. John Nicholson, Deputy. Seal United States District Court, District of Nebraska, Omaha Division.)

[fol. 985] IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

This certifies that the above and foregoing is a correct statement of the evidence and rulings of the court in the trial of the above and within cause and is hereby approved; that those portions of the testimony repeated verbatim from the language of the witnesses are so included at the request of the parties and are hereby approved; and it is ordered that the above and foregoing statement of the evidence be made a part of the record herein.

Dated at Omaha, Nebraska, this 11th day of February, A. D. 1929.

J. W. Woodrough, Judge of the United States District Court for the District of Nebraska and one of the three judges participating in the trial and decision of the above-entitled cause.

[fol. 986] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Jan. 2, 1929

Now come Tagg Bros. & Moorhead, a corporation organized under the laws of the State of Nebraska, Richard M. Laverty, engaged in business under the name and style of Laverty Bros., Will H. Wood and Herman J. Oswald, co-partners doing business under the name and style of Wood-Oswald Co., C. A. Oss, doing business under the name and style of American Live Stock Com. Co.; R. R. Keenan and B. B. Blanchard, partners as Blanchard & Keenan; Frank E. Bliss, doing business under the name and style of Bliss & Son; Frank C. Bliss, Frank F. A. Wellman and Clair H. Hopkins, partners as Bliss-Wellman & Hopkins; Charles W. Boetel, doing business under the name and style of Boetel Live Stock Com. Co.; Bowles Live Stock Com. Co., at Omaha, a corporation organized under the laws of the State of Nebraska; Bryson Bros., a corporation organized under the laws of the State of Nebraska; W. W. Buchanan, doing business under the name and style of Alex G. Buchanan & Son; Chas. Burke, Webster Mills and Everett H. Burke, doing business as partners under the name of Burke Rickly Co.; Byers Bros. & Co. Live Stock Com. Corporation, a corporation organized under the laws of the State of Nebraska; John Clay, Frank H. Connor, C. A. Kleman, Alan F. Wilson and C. G. Smith, partners doing business under the name and style of John Clay & Co.; Clay C. Clifton and Claud Clifton, partners under the name and [fol. 987] style of Clifton Commission Co.; Clow-Lush, successors to Byron Clow, a corporation organized under the laws of the State of Nebraska; M. F. Guilfoyle, doing business under the name of Corn Belt Commission Co.; W. F. Bavinger and W. T. Cox, partners under the name and style of Cox-Jones Com. Co.; W. J. Dearth, doing business under the name and style of Dearth and Company (Successors to Geo. M. Wood Sheep Com. Co.); W. F. Denny, doing business under the name and style of W. F. Denny & Co.; Donahue Brothers, Inc., a corporation organized under the laws of the State of Nebraska; Allen H. Dudley and Chester P. Dudley, partners under the name and style of Allen Dud-

ley & Co.; Frank Dworak and Theo. J. Stolinski, partners under the name and style of Dworak-Stolinski Com. Co.; T. W. Farris, doing business under the name and style of Farris-Marcy Company; Fonda, Kells & Christie, a corporation, organized under the laws of the State of Nebraska; Frazier-Johnson Co., a corporation organized under the laws of the State of Nebraska; H. T. Gantz, doing business under the name and style of Gantz Live Stock Com. Co.; Henry Dolezal and D. P. Hogan, partners under the name and style of The Globe Live Stock Com. Co.; C. L. Peterson, J. O. Alsworth, M. S. Morrill and John Boetel, partners under the name and style of Great Western Com. Co.; G. W. Greene and Walter Madden, partners under the name and style of Greene Madden & Co.; R. B. Daugherty, doing business under the name and style of Ingwersen & Daugherty; Charles F. Cox, R. L. Reynolds, and J. J. Donahue, partners under the name and style of The Inter-State Live Stock Commission Co.; T. A. Jackson, doing business under the name and style of Jackson Live Stock Co.; Jim Jensen and Frank Sterba, partners under the name and style of Jensen-Sterba L. S. Com. Co.; Jacob Jacobs, doing business under the name and style of Jacob Jacobs Live Stock Comm. Co.; J. N. Laird, doing business under the name and style of Laird Live Stock Commission Company; Lee Live Stock Comm. Co., a corporation organized under the laws of the State of Nebraska; Lindley-Cahow Company, a corporation organized under the laws [fol. 988] of the State of Nebraska; Wm. H. McAdams and Robert O. Ihnen, partners under the name and style of McAdams Bros. & Ihnen; Frank McDonald, doing business under the name and style of Frank McDonald Live Stock Com. Co.; Martin Bros. & Company, a corporation organized under the laws of the State of Nebraska; Eugene P. Melady, doing business under the name and style of Melady Bros.; D. C. Johnson and J. T. Sullivan, partners doing business under the name and style of Mutual Live Stock Com. Co.; Omaha Live Stock Com. Co., a corporation organized under the laws of the State of Nebraska; John Ralston, doing business under the name and style of Ralston Live Stock Com. Co.; Randall & Company, a corporation organized under the laws of the State of Nebraska; Clifford McCleneghan, doing business under the name and style of Record Live Stock Com. Co.; H. H. Roberts and E. A.

Rose, partners under the name and style of Roberts Bros. & Rose Live Stock Com. Co.; L. E. Roberts & Co., a corporation organized under the laws of the State of Nebraska; Carl Wallin, Ward Burgoin and Chris Hansen, partners under the name and style of Charles O. Robinson & Co.; Rosenbaum Bros. & Co., a corporation organized under the laws of the State of Illinois; John Cunningham, doing business under the name and style of Security Live Stock Com. Co.; John Smith and J. C. Eastes, partners under the name and style of Wm. R. Smith & Son; Snyder Malone Coffman Co., Inc., a corporation organized under the laws of the State of Nebraska; Geo. E. Parker, C. J. Horn and John O. Nielsen, partners under the name and style of Triangle Live Stock Com. Co.; Jay N. Williams and L. E. Williams, partners under the name and style of Williams & Sons; P. H. Winn and J. P. Winn, partners under the name and style of Winn Bros.; Kay Wood, E. N. Munson, B. F. Roth, C. H. Cheyney and C. C. Johnson, partners under the name and style of Wood Bros, Omaha; and assign the following errors of the trial court, upon which plaintiffs and appellants will rely in the prosecution of their appeal [fol. 989] to the Supreme Court of the United States, from the final order and judgment of the trial court made and entered herein December 31st, 1928.

1. The Packers and Stockyards Act of August 15, 1921, (Chapter 64, 42 Stat. at Large 159), insofar as it purports to authorize the Secretary of Agriculture to fix the commissions charged by commission men for the handling and selling of live stock in the stockyards, is invalid for the following reasons:

(a) It is not a regulation of interstate commerce within the meaning of the commerce clause of the constitution.

(b) Even if it be a regulations of commerce, yet the said portion of the statute and the action taken thereunder by the Secretary of Agriculture, are subject to the prohibition of the Fifth Amendment and are, therefore, void as an impairment of the liberty of contract guaranteed by such amendment, and constitute a taking of property without due process of law.

(c) In so far as the said Act of Congress attempts to delegate to an executive official the power to fix the labor wages

of commission men, it is also void, as the Constitution has not authorized Congress to delegate such a power to regulate the wages of labor for a personal service.

2. The Court erred in finding that the Packers and Stock Yards Act of 1921, Title II (Chapter 64, 42 Statutes at Large 159; U. S. C. 1925, Title 7, Chapter 9), gives to the Secretary of Agriculture the power to issue an order to market agencies, such as plaintiffs, at the conclusion of any hearing before him, the only authority for the issuance of an order of such character being found in Section 310 of [fol. 990] said Act, which, in respect to market agencies, provides only that the Secretary may determine and prescribe just and reasonable rates, charges and practices to be thereafter observed, but the authority to issue an order applying only to the owners and operators of stockyards and not to market agencies.

3. The Court erred in refusing to find that by the terms of Section 306(e) of the Packers and Stockyards Act of August 15, 1921, and by the terms of the order of suspension of January 25, 1926, the lawful scope of inquiry before the Secretary of Agriculture did not extend beyond the question whether Tariff No. 2, as set forth in the exhibits to the petition, insofar as in excess of Tariff No. 1, was unlawful or was unjust, unreasonable or discriminatory, and so much of the order as reduced the rates and charges in Tariff No. 1 was beyond the lawful scope of the inquiry and to that extent the order of November 19, 1926 is void.

4. The Court erred in failing and refusing to find and hold that the rates and charges prescribed by the Secretary's order of November 19th, 1926, are unjust and illegal, in that they will not provide sufficient remuneration to repay petitioners their lawful expenses and a reasonable and just compensation for their services, and the enforcement of the order will have the effect of depriving petitioners of their property without due process of law, contrary to provisions of the Fifth Amendment to the Constitution of the United States.

5. The Court erred in failing and refusing to hold that the evidence presented to the Secretary of Agriculture was not sufficient to show or to establish that the tariff pre-

scribed in the order of November 19th, 1926, would adequately compensate petitioners for their services and for the usual and legitimate disbursements made in rendering same.

6. The Court erred in holding that the presumption as [fol. 991] to the reasonableness of the actual costs of a utility, in the absence of affirmative evidence of waste, extravagence and excessiveness, does not apply to the plaintiffs or to the business carried on by them.

7. The Court erred in finding and holding that the Secretary of Agriculture in issuing the order of November 19, 1926, had before him sufficient evidence upon which to construct a rate base, and in finding and holding that the Sec. retary in issuing said order included in the rate bases all items of expense to the plaintiffs.

8. The Court erred in holding that the Secretary could not find or ascertain from the actual operation of the business carried on by plaintiffs any common ground of reasonable maximum charges.

9. The Court erred in finding and holding that there is such variation in the several items of out-of-pocket costs of the various plaintiffs as to afford no uniform basis for fixing their actual costs as a part of a rate base.

10. The Court erred in sustaining the Secretary of Agriculture in disregarding actual costs in favor of "A normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management in their business."

11. The Court erred in sustaining the finding of the Secretary of Agriculture that the reasonable cost of handling a car of live stock in 1925 on the Omaha market was $13.25 for cattle, $9.85 for hogs and $13.05 for sheep.

12. The Court erred in finding and holding that the Secretary's finding as to the selling cost per car was based on evidence as to the actual experience in plaintiffs' business and that said finding was within his power and discretion.

13. The Court erred in holding that not one, nor an average, of the cost figures disclosed by the evidence as to the

[fol. 992] actual operation of plaintiff's business could be accepted as a reasonable standard for rate making purposes.

14. The Court erred in refusing to set aside the finding of the Secretary as to selling costs.

15. The Court erred in failing and refusing to find that the practical application to the plaintiffs' business of the Secretary's finding as to the reasonable cost of selling per car showed the Secretary's order unjust and unreasonable.

16. The Court erred in holding and finding that a comparison of actual averages of costs expended by plaintiffs in their business was immaterial; in failing to give any significance to actual averages so found; and in holding that such averages had no tendency to show that the finding of the Secretary, as to reasonable costs, was erroneous.

17. The Court erred in sustaining the Secretary's finding as to "reasonable costs" of other items of expense and in sustaining the Secretary's refusal to be bound by the facts as to the actual operation of the business, in arriving at reasonable costs.

18. The Court erred in holding that it was the plaintiffs' duty at the hearing before the Secretary to apprise him of all overhead cost items that should be taken into account in fixing a rate base.

19. The Court erred in holding that going concern value should not be an element of the rate base in a business such as plaintiffs'.

20. The Court erred in finding and holding that the allowance of the reasonable cost of business getting, which included advertising, by the Secretary of Agriculture, was reasonable and within his powers.

21. The Court erred in holding that the Secretary's failure, in arriving at reasonable costs, to allow for bad debts, supervision, additional invested capital, going concern [fol. 993] value and depreciation should have been called to the Secretary's attention by the plaintiffs; and in holding that the Secretary's failure to include these items was

immaterial and had no bearing on the issue as to whether or not the Secretary's rates were confiscatory.

22. The Court erred in holding that the confiscatory character of the rates prescribed by the Secretary could not be demonstrated in advance of their practical operation.

23. The Court erred in holding that the rates prescribed by the Secretary included a sufficient margin to cover the basic costs omitted by him.

24. The Court erred in disregarding the undisputed evidence as to the effect of the increase, authorized in the Secretary's order, in the rate prescribed for traders and speculators.

25. The Court erred in holding immaterial the undisputed evidence as to the practical effect of the Secretary's rates on the individual plaintiffs, and the undisputed evidence as to the inability of individual plaintiffs to transact business, except at a loss, thereunder.

26. The Court erred in disregarding and in finding immaterial the evidence adduced before the Special Master as to the practical application of the Secretary's rates; in eliminating from consideration the undisputed evidence as to the effect of practical application of the cost items found and allowed by the Secretary; and in finding such evidence immaterial on account of the inclusion therein of cost items condemned by the Secretary's order, without affirmative proof of the excessiveness of the several cost items so condemned by him.

27. The Court erred in finding and holding that a rate for personal services, admittedly confiscatory as to plaintiffs doing a small amount of business, and as to many of [fol. 994] plaintiffs irrespective of the amount of their business, can be sustained by fixing the number of plaintiffs entitled to carry on the business, or by eliminating numerous plaintiffs for the purpose of increasing compensation to those remaining.

28. The Court erred in finding that the plaintiffs' attack upon the order of the Secretary was not sustained by the evidence.

29. The Court erred in dissolving the temporary injunction and in denying to plaintiffs a permanent injunction.

30. The Court erred in dismissing the petition of the plaintiffs and the petition in intervention of the intervening plaintiffs.

31. The Court erred in failing and refusing to sustain plaintiffs' motion to confirm the report of the Special Master and enter decree in accordance therewith.

James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 995] In United States District Court

[Title omitted]

Petition for Appeal—Filed Jan. 2, 1929

The above named Tagg Bros. & Moorhead, a corporation, organized under the laws of the State of Nebraska, Richard M. Laverty, engaged in business under the name and style of Laverty Bros., Will H. Wood and Herman J. Oswald, co-partners doing business under the name and style of Wood-Oswald Co., C. A. Oss, doing business under the name and style of American life Stock Com. Co.; R. R. Keenan and B. B. Blanchard, partners as Blanchard & Keenan; Frank E. Bliss, doing business under the name and style of Bliss & Son; Frank C. Bliss, Frank F. A. Wellman and Clair H. Hopkins, partners as Bliss-Wellman & Hopkins; Charles W. Boetel, doing business under the name and style of Boetel Live Stock Com. Co.; Bowles Live Stock Com. Co. at Omaha, a corporation organized under the laws of the State of Nebraska; Bryson Bros., a corporation organized under the laws of the State of Nebraska; W. W. Buchanan, doing business under the name and style of Alex G. Buchanan & Son; Chas. Burke, Webster Mills and Everett H. Burke, doing business as partners under the name of Burke Rickly Co.; Byers Bros. & Co. Live Stock Com. Corporation, a corporation organized under the laws

of the State of Nebraska; John Clay, Frank H. Connor, [fol. 996] C. A. Kleman, Alan F. Wilson and C. G. Smith, partners doing business under the name and style of John Clay & Co.; Clay C. Clinton and Claud Clifton, partners under the name and style of Clifton Commission Co.; Clow-Lush, successors to Bryon Clow, a corporation organized under the laws of the State of Nebraska; M. F. Guilfoyle, doing business under the name of Corn Belt Commission Co.; W. F. Bavinger and W. T. Cox, partners under the name and style of Cox-Jones Com. Co.; W. J. Dearth, doing business under the name and style of Dearth and Company (Successors to Geo. M. Wood Sheep Com. Co.); W. F. Denny, doing business under the name and style of W. F. Denny & Co.; Donahue Brothers, Inc., a corporation organized under the laws of the State of Nebraska; Allen H. Dudley and Chester P. Dudley, partners under the name and style of Allen Dudley & Co.; Frank Dworak and Theo. J. Stolinski, partners under the name and style of Dworak-Stolinski Com. Co.; T. W. Farris, doing business under the name and style of Farris-Marcy Company; Fonda Kells & Christie, a corporation, organized under the laws of the State of Nebraska; Frazier-Johnson Co., a corporation organized under the laws of the State of Nebraska; H. T. Gantz, doing business under the name and style of Gantz Live Stock Com. Co.; Henry Dolezal and D. P. Hogan, partners under the name and style of The Globe Live Stock Com. Co.; C. L. Peterson, J. O. Alsworth, M. S. Morrill and John Boetel, partners under the name and style of Great Western Com. Co.; G. W. Greene and Walter Madden, partners under the name and style of Greene Madden & Co.; R. B. Daugherty, doing business under the name and style of Ingwersen & Daugherty; Charles F. Cox, R. L. Reynolds, and J. J. Donahue, partners under the name and style of The Inter-State Live Stock Commission Co.; T. A. Jackson, doing business under the name and style of Jackson Live Stock Co.; Jim Jensen and Frank Sterba, partners under the name and style of Jensen-Sterba L. S. [fol. 997] Com. Co; Jacob Jacobs doing business under the name and style of Jacob Jacobs Live Stock Com. Co.; J. N. Laird, doing business under the name and style of Laird Live Stock Commission Company; Lee Live Stock Comm. Co., a corporation organized under the laws of the State

of Nebraska; Lindley-Cahow Company, a corporation organized under the laws of the State of Nebraska; Wm. H. McAdams and Robert O. Ihnen, partners under the name and style of McAdams Bros. & Ihnen; Frank McDonald, doing business under the name and style of Frank McDonald Live Stock Com. Co.; Martin Bros. & Company, a corporation organized under the laws of the State of Nebraska; Eugene P. Melady, doing business under the name and style of Melady Bros.; D. C. Johnson and J. T. Sullivan, partners doing business under the name and style of Mutual Live Stock Com. Co.; Omaha Live Stock Com. Co., a corporation organized under the laws of the State of Nebraska; John Ralston, doing business under the name and style of Ralston Live Stock Com. Co.; Randall & Company, a corporation organized under the laws of the State of Nebraska; Clifford McCleneghan, doing business under the name and style of Record Live Stock Com. Co.; H. H. Roberts and E. A. Rose, partners under the name and style of Roberts Bros. & Rose Live Stock Com. Co.; L. E. Roberts & Co., a corporation organized under the laws of the State of Nebraska; Carl Wallin, Ward Burgoin and Chris Hansen, partners under the name and style of Charles O. Robinson & Co.; Rosenbaum Bros. & Co., a corporation organized under the laws of the State of Illinois; John Cunningham, doing business under the name and style of Security Live Stock Com. Co.; John Smith and J. C. Eastes, partners under the name and style of Wm. R. Smith & Son; Snyder Malone Coffman Co. Inc., a corporation organized under the laws of the State of Nebraska; Geo. E. Parker, C. J. Horn and John O. Neilsen, partners under the name and style of Triangle Live Stock Com. Co.; Jay N. Williams [fol. 998] and L. E. Williams, partners under the name and style of Williams & Sons; P. H. Winn and J. P. Winn, partners under the name and style of Winn Bros.; Kay Wood, E. N. Munson, B. F. Roth, C. H. Cheyney and C. C. Johnson, partners under the name and style of Wood Brothers, Omaha; plaintiffs herein, conceiving themselves to be aggrieved by the final order and judgment entered in the above entitled cause at the September, 1928, term of said court, to-wit, on the 31st day of December, 1928, hereby appeal from the said final order and judgment in which said final order and judgment it is considered and adjudged

that the temporary injunction heretofore issued herein should be dissolved and that the petition of the plaintiffs and of the intervening plaintiffs be dismissed at plaintiffs' costs, and pray that this, their appeal to the Supreme Court of the United States, may be allowed and that a citation may be issued, as provided by law, and that a transcript of the record, proceedings and papers upon which said final order and judgment of this court was made, duly authenticated, may be sent to said Supreme Court of the United States.

At the time of filing their petition for appeal, the said plaintiffs file herein an assignment of errors, setting up separately and particularly each error assigned and intended to be urged before the Supreme Court of the United States.

James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Attorneys for Plaintiffs.

January 2, 1929.

[File endorsement omitted.]

[fol. 999] In United States District Court

In Equity. No. 847

Tagg Bros. & Moorhead, a Corporation, et al., Petitioners,

vs.

The United States of America et al., Respondents; C. A. Oss et al., Intervening Plaintiffs.

Order Allowing Appeal—Filed Jan. 2, 1929

Upon reading the petition of the plaintiffs and of the intervening plaintiffs herein, dated January 2, 1929, for the allowance of an appeal herein, and on consideration of the assignment of errors presented therewith, ordered that the appeal as prayed for be and is hereby allowed in favor of the plaintiffs and the intervening plaintiffs upon the final order and judgment to the Supreme Court of the United States, and that a duly certified transcript of the

record, evidence and all proceedings herein be forthwith authenticated and transmitted to the Clerk of the Supreme Court of the United States.

It is further ordered that the plaintiffs and intervening plaintiffs be and they are hereby required to give a good and sufficient appeal bond in the sum of $1,000.00 conditioned according to law, the same to operate as a supersedeas bond and bond for costs and damages in the said appeal; and that upon the giving of said bond and its approval, the temporary injunction heretofore issued herein be and remain in full force and effect during the pendency of such appeal.

By the Court:

J. W. Woodrough, District Judge, one of the judges sitting in said cause and participating in the decision thereof.

[File endorsement omitted.]

[fols. 1000-1004] Bond on Appeal for $1,000, approved and filed January 12, 1929, omitted in printing.

[fol. 1005] In United States District Court

[Title omitted]

Notice of Appeal—Filed Jan. 2, 1929

The above named defendants and their attorneys will take notice that the plaintiffs and the intervening plaintiffs appeal to the Supreme Court of the United States from the final order and judgment made and entered herein December 31st, 1928, entering judgment in favor of the defendants and against the plaintiffs, and dismissing the petition of the plaintiffs and intervening plaintiffs herein at plaintiffs' costs.

That the plaintiffs' said appeal is taken for the purpose of reviewing the proceedings at the trial of said cause and for the purpose of reversing said final order and judgment or decree of the trial court from which this appeal is taken,

and for the further purpose of having judgment entered in favor of the plaintiffs and intervening plaintiffs herein, as prayed in their amended petition and petition of intervention.

[fol. 1006] You are further notified that in prosecuting this appeal the plaintiffs and intervening plaintiffs will rely on the assignment of errors filed in the office of the Clerk of said court in which this action is pending.

And you and each of you are hereby further notified to be and appear in said Supreme Court of the United States, at the City of Washington, District of Columbia, thirty days from and after the date of this notice of appeal, to show cause, if any there be, why said final judgment, order or decree appealed from should not be corrected and why speedy justice should not be done the parties in that behalf.

Dated this 2d day of January, 1929.

James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Attorneys for Plaintiffs and Intervening Plaintiffs.

[fol. 1007] STATE OF NEBRASKA,
County of Douglas, ss:

Anan Raymond, being first duly sworn deposes and says that he is one of the attorneys for the plaintiffs and intervening plaintiffs, above named; that on the 2nd day of January, 1929, he served the above and foregoing Notice of Appeal upon the defendants herein and each of them, by delivering unto J. C. Kinsler, United States District Attorney and attorney of record for the defendants herein, personally, a notice of which the within and foregoing is a true copy.

Anan Raymond.

Witness my hand and official seal the date last above written.

R. C. Hoyt, Clerk. John Nicholson, Deputy. (Seal United States District Court, District of Nebraska, Omaha Division.)

[File endorsement omitted.]

[fols. 1008-1010] Citation, in usual form, showing service on J. C. Kinsler, filed January 2, 1929, omitted in printing.

[File endorsement omitted.]

[fol. 1011] In United States District Court

[Title omitted]

Motion to Set Aside Portion of Order Allowing Appeal

Come now the defendants by James C. Kinsler, United States Attorney, William J. Donovan, The Assistant to the Attorney General, and H. B. Teegarden, Special Assistant to the Attorney General, and move to vacate and set aside as null and void so much of the order allowing appeal, hereinbefore entered, as authorizes the appeal bond to operate as a supersedeas and grants or continues a temporary injunction during the pendency of such appeal.

The reasons for this motion more fully appear in the supporting statement filed herewith.

William J. Donovan, the Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General. James C. Kinsler, United States Attorney.

[fol. 1012] In United States District Court

[Title omitted]

Statement in Support of Motion to Vacate—Filed Jan 7, 1929

This case is brought under Section 316 of the Packers and Stockyards Act, 1921, 42 Stat. 159, which incorporates by reference laws relating to setting aside orders of the Interstate Commerce Commission. Among these is the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 218, which forbade the issuance of any temporary or permanent injunction against an order of the Interstate Commerce Commission except by a court of three judges constituted

as therein provided. Such a court has heard this case and rendered its decision of December 18, 1928, in which it concluded that the temporary injunction hereinbefore issued should be dissolved and plaintiffs' and intervenor's bills be dismissed. This was carried out by Judge Woodrough's order of December 31, 1928.

From this order the plaintiffs and intervenors appeal, and in the order allowing appeal, entered January 2, 1929 by Judge Woodrough alone, the appellants were required to give an appeal bond in the sum of one thousand dollars, "the same to operate as a supersedeas bond and bond for costs and damages in the said appeal, and that on the giving of said bond and its approval, the temporary injunction heretofore issued herein be and remain in full force and effect during the pendency of such appeal." It is this por- [fol. 1013] tion of the order which the Government now moves to vacate and set aside as jurisdictionally invalid.

Argument

In Cumberland Telephone & Telegraph Company v. Louisiana Public Service Commission, 260 U. S. 212, the District Court had denied the plaintiff's application for an interlocutory injunction against the enforcement of the Commission's order reducing the company's telephone rates. In the order allowing appeal Judge Foster, sitting alone, granted a supersedeas and continued the original restraining order until the appeal could be determined. On motion by the Commission before the Supreme Court of the United States, that court held that the supersedeas had no effect, and that a single judge of a three judge court required to hear applications for injunctions against state officers had no power to continue or grant a restraining order pending appeal from the three judge decision. The court declared "This is a question of statutory power and jurisdiction, not one of judicial discretion or equitable consideration." The record indicated that Judge Foster was carrying out the wishes of the other two judges, but the Supreme Court held this immaterial and declared that such an order could only be issued as the formal act of the three judges or a majority of them, either over their signatures or by announcement in open court with the three judges sitting, and only after notice of the application to opposing

counsel, except in extraordinary circumstances (p. 218). While the three judge court in that case was under a different statute from the one which sat in the present case, the purpose and procedure of the two statutes are identical, the only important difference being that one relates to or-[fol. 1014] ders of the Interstate Commerce Commission and the Secretary of Agriculture, while the other relates to orders of State officials and administrative boards. Indeed, the Supreme Court recognizes this similarity in Virginian Railway Company v. United States, 272 U. S. 658, 672, where it discusses the power of a three judge court, such as the present one, to continue a temporary injunction pending appeal from its order of dismissal.

The present motion is jurisdictional, but does not represent a technical position by the Government. It is believed that the continuance of an injunction pending appeal is not warranted in this case under the principles laid down in the Cumberland Telephone & Telegraph case, supra, and in Virginian Railway Company v. United States, 272 U. S. 658. There the District Court refused the Railway's application for a temporary injunction against a rate fixing order of the Interstate Commerce Commission, and dismissed the bill, but in its final decree included a clause restraining the enforcement of the Commission's order pending the perfecting and determination of the appeal. This, therefore, had a sanction of the full three judge court. The United States took a cross appeal from this portion of the order, and the Supreme Court sustained the Government, holding that when a lower court has once dismissed the bill on the merits it raises a strong presumption as to the validity of the order at which the suit is aimed and it should not be further enjoined except under extraordinary circumstances. The imminence of irrreparable damage to the appellant pending appeal is not such a circumstance. The court further said:

To justify granting the stay after a final decree sustaining the Commission's order, it must appear either that the [fol. 1015] district court entertains a serious doubt as to the correctness of its own decision; or that the decision depends upon a question of law on which there is conflict among the courts of the several circuits; or that some other special reason exists why the order of the Commission

ought not to become operative until its validity can be considered by this Court (673).

Conclusion

For these reasons it is respectfully submitted that the court's order allowing appeal should be modified as prayed.

William J. Donovan the Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General. James C. Kinsler, United States Attorney.

[File endorsement omitted.]

[fol. 1016] In United States District Court

[Title omitted]

Order Vacating Portion of Order Allowing Appeal—Filed Jan. 19, 1929

On the 19th day of January, 1929, the above entitled matter came on to be heard on the motion of the defendants filed herein January 7, 1929, "to set aside portion of order allowing appeal," and was duly submitted to the Court; and now the Court, being fully advised in the premises, finds that said motion should be sustained.

Wherefore it is considered and ordered by the Court that said motion of the defendants be and it is hereby sustained, and

It is further ordered that so much of said "order allowing appeal" made, entered and filed herein January 2, 1929, as reads as follows, namely:

"The same to operate as a supersedeas bond * * * in the said appeal; and that upon the giving of said bond and its approval the temporary injunction heretofore issued herein be and remain in full force and effect during the pendency of such appeal."

be and it is hereby vacated and set aside as null and void.

The plaintiffs are duly allowed an exception to the foregoing findings and rulings of the Court.

Dated this 19th day of January, 1929.

[fol. 1017] By the Court:

—— ——, United States Circuit Judge. J. W. Woodrough, United States District Judge. —— ——, United States District Judge.

[File endorsement omitted.]

[fol. 1018] In United States District Court

[Title omitted]

Motion for Supersedeas—Filed Jan. 19, 1929

Come now the petitioners and the intervening plaintiffs and move the Court to grant a supersedeas of the decree rendered and entered in this cause by this Court, pursuant to the opinion and decision of three judges assigned to the hearing thereof on the 31st day of December, 1928, pending the hearing of the appeal to the Supreme Court of the United States, which has already been taken and allowed; and they also move the court to continue in effect during the pendency of the said appeal in the said Supreme Court of the United States the temporary injunction issued by the said three judges on the 31st day of December, 1926, suspending the order of the Secretary of Agriculture of November 19th, 1926, the said continuance of said temporary injunction to be upon such terms and conditions for the protection of all persons affected by the said temporary injunction as the Court may order and direct.

James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Attorneys for Petitioners and Intervening Plaintiffs.

[File endorsement omitted.]

[fol. 1019] In United States District Court

[Title omitted]

Notice of Application for Supersedeas—Filed Feb. 13, 1929

To the respondents and their attorneys of record:

You and each of you are hereby notified that on Saturday the 9th day of February, 1929, at the hour of 10:00 o'clock

in the forenoon, or as soon thereafter as counsel can be heard in the Federal Building at Oklahoma City in the State of Oklahoma, before Honorable Robert E. Lewis, Circuit Judge, Honorable J. W. Woodrough, District Judge, and Honorable George C. Scott, District Judge, the petitioners and intervening plaintiffs in the above cause will present their application for an order to supersede the decree entered in the above cause in the said court on the 31st day of December, 1928, dissolving the temporary injunction issued at the commencement of the action on the 31st day of December, 1926, and for a further order continuing in effect during the pendency of this cause in the Supreme Court of the United States the said temporary injunction upon such terms and conditions as the court in the said hearing may prescribe.

A copy of the said motion is hereto annexed.

James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Attorneys for Petitioners and Intervening Plaintiffs, Appellants.

[fol. 1020] Service of the above notice acknowledged this 31st day of January, 1929.

James C. Kinsler, United States District Attorney.

[File endorsement omitted.]

[fol. 1021] In United States District Court

[Title omitted]

Order Denying Application for Temporary Injunction—Filed Feb. 11, 1929

This case came on this day for further hearing upon application of applicants for a temporary injunction pending the determination of their appeal in the Supreme Court of the United States; And the parties being represented by counsel, and the Court being fully advised in the premises,

It is hereby ordered, adjudged, and decreed that said application be, and the same is hereby, denied.

To which ruling the appellants except.

Robt. E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Geo. C. Scott, District Judge.

[File endorsement omitted.]

[fol. 1022] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 2, 1929

The Clerk of the said Court is requested to prepare and transmit to the Clerk of the Supreme Court of the United States a transcript of the record, and include therein the following, to-wit:

1. Amended Petition and Exhibits thereto.
2. Temporary Injunction.
3. Petition of additional Parties.
4. Answers of defendants.
5. Motion of plaintiffs to refer.
6. Order of reference.
7. Report of Special Master.
8. Motion to confirm report of Special Master and for decree.
9. Exceptions to report of Special Master.
10. All trial orders.
11. Statement of the evidence.
12. Opinion of the court.
13. Final judgment.
14. Assignment of errors.
15. Petition for appeal.

[fol. 1023] 16. Order allowing appeal.

17. Citation and service thereof.
18. Notice of Appeal and service thereof.
19. Bond on Appeal.
20. Præcipe for transcript of record and Clerk's certificate to transcript.

Francis A. Brogan, Alfred G. Ellick, Anan Raymond, James M. Beck, Attorneys for Plaintiffs and Intervening Plaintiffs.

STATE OF NEBRASKA,
County of Douglas, ss:

Anan Raymond, being first duly sworn deposes and says that he is one of the attorneys for the plaintiffs and intervening plaintiffs, above named; that on the 2nd day of January, 1929, he served the above and foregoing præcipe

for transcript upon the defendants herein and each of them, by delivering to J. C. Kinsler, United States District Attorney and attorney of record for the defendants herein, personally, a true copy of said præcipe and of all endorsements thereon.

Anan Raymond.

Witness my hand and official seal the date last above written.

R. C. Hoyt, Clerk. John Nicholson, Deputy. (Seal.)

[File endorsement omitted.]

[fol. 1024] In United States District Court

[Title omitted]

Supplemental Præcipe—Filed Feb. 13, 1929

The Clerk of the said Court is requested to prepare and transmit to the Clerk of the Supreme Court of the United States a transcript of the record, and include therein the following in addition to the papers included in original præcipe herein, to-wit:

1. Motion of defendants to vacate portion of order of appeal relating to supersedeas.
2. Order sustaining said motion.
3. Application for order superseding decree and continuing temporary injunction in effect.
4. Notice of hearing upon said application.
5. Order denying said application.
6. Supplemental præcipe.

James M. Beck, F. A. Brogan, A. G. Ellick, Anan Raymond, Attorneys for Petitioners and Intervening Plaintiffs, Appellants.

[fol. 1025] United States of America,
State of Nebraska,
Douglas County, ss:

Anan Raymond being duly sworn, deposes and says that he is one of plaintiffs' attorneys in the above cause. That

on February 13, 1929 he served the within and above supplemental præcipe upon defendants by delivering personally to J. C. Kinsler, United States District Attorney and attorney of record for defendants, a true and correct copy of same.

Anan Raymond.

Subscribed in my presence and sworn to before me February 13, 1929. R. C. Hoyt, Clerk United States District Court. John Nicholson, Deputy. (Seal.)

[File endorsement omitted.]

[fols. 1026-1028] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1029] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed March 12, 1929

Appellants hereby adopt the statement of points upon which they intend to rely as set forth in the assignment of errors appearing at page 123 of the record herein; and the designation of the parts of the record which they consider necessary for the consideration of the points relied upon, as set forth in the præcipe and supplemental præcipe herein, respectively, as the statement of the points relied upon and the designation of the parts of the record which they think necessary for the consideration thereof, as required by paragraph nine (9) of rule thirteen (13) of the rules of the Supreme Court of the United States.

Tagg Bros. & Moorhead et al., by James M. Beck, Francis A. Brogan, Alfred G. Ellick, Anan Raymond, Their Attorneys.

United States of America,
State of Nebraska,
County of Douglas, ss:

Anan Raymond, being first duly sworn, deposes and says that he is one of the counsel for the appellants in the above

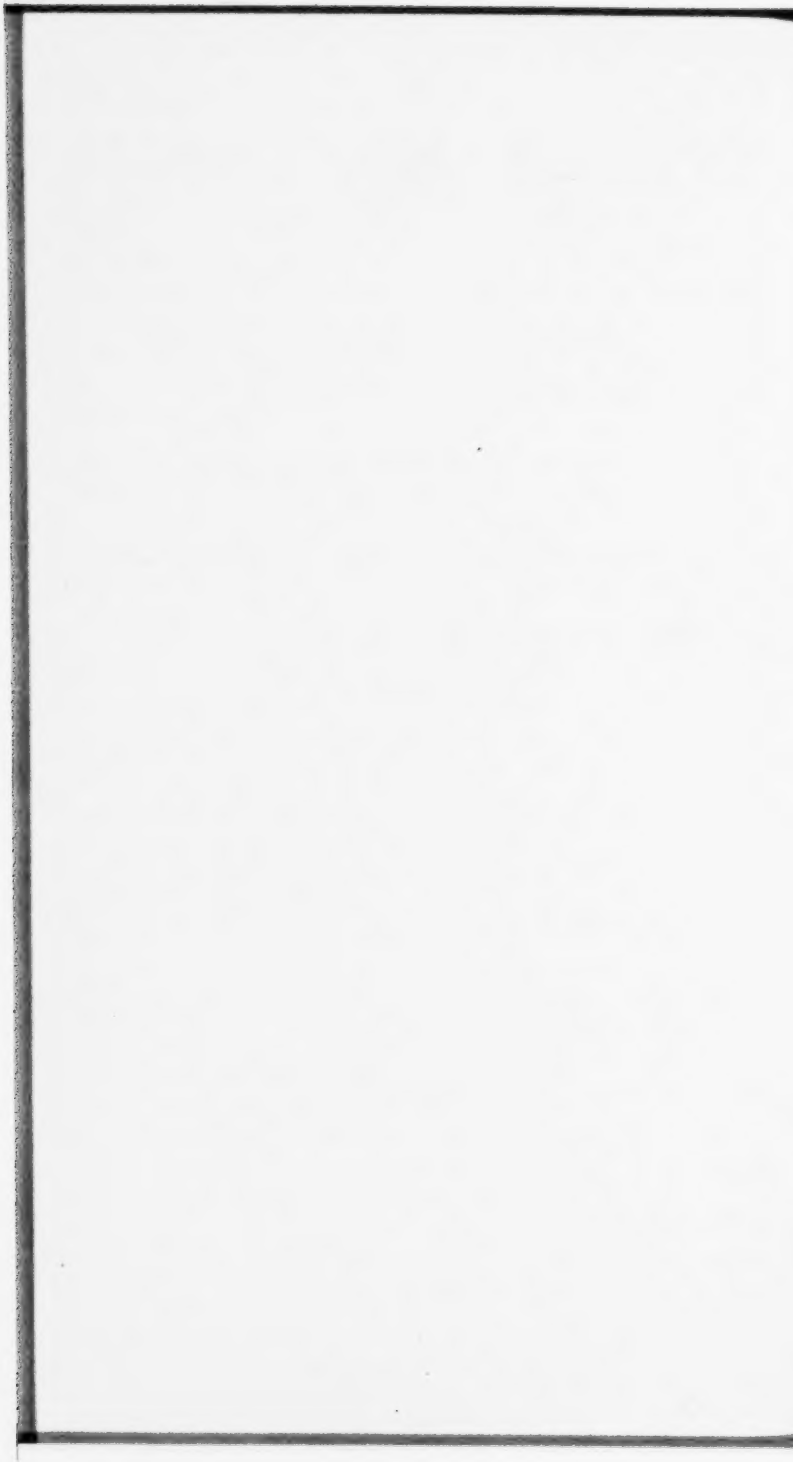
[fol. 1030] cause; that on the 8th day of March, 1929, he served upon the appellees herein statement of points to be relied upon and designation of the parts to be printed by delivering personally to James C. Kinsler, United States District Attorney for the District of Nebraska, one of the defendants herein and counsel of record for the defendants, a statement of points to be relied upon and designation of the parts of the record to be printed, of which the above and foregoing is a true and correct copy.

Anan Raymond.

Subscribed in my presence and sworn to before me this 8th day of March, A. D. 1929. E. L. Van Nice, Notary Public. (Notarial Seal E. L. Van Nice, Douglas County, Nebraska. Commission expires Oct. 17, 1934.)

[fol. 1031] [File endorsement omitted.]

Endorsed on cover: File No. 34,047. Nebraska D. C. U. S. Term No. 738. Tagg Bros. & Moorhead, Richard M. Laverty, engaged in business under the name and style of Laverty Bros.; Will H. Wood, et al., etc., et al., appellants, vs. The United States of America, William M. Jardine, as Secretary of Agriculture; John G. Sargent, Attorney General, et al. Filed March 1st, 1929. File No. 34,047.



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CHARLES ELMORE C

IN THE SUPREME COURT OF THE UNITED STATES

TAGG BROS. & MOORHEAD,
A Corporation, et al.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, et al.,
Appellees.

October Term 1928
No. 45

STATEMENT OF JURISDICTION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

JAMES M. BECK,
FRANCIS A. BROGAN,
ALFRED G. ELLICK,
ANAN RAYMOND,
Attorneys for Appellants.

THE COCKLE PRINTING CO., LAW BRIEFS, OMAHA, NEB.

IN THE SUPREME COURT OF THE UNITED STATES

TAGG BROS. & MOORHEAD,
A Corporation, et al.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, et al.,
Appellees.

October Term 1928

No. 738

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

STATEMENT OF JURISDICTION.

Plaintiffs and appellants, market agencies registered under the Packers and Stock Yards Act of August 15th, 1921, (Chapter 64, 42 Statutes at Large 165; U. S. C. 1925, Title 7, Chapter 9), at Omaha, Nebraska, filed in the District Court of the United States for the District of Nebraska a bill in equity against the United States of America, the Secretary of Agriculture, the Attorney General and the United States District Attorney for the District of Nebraska, to enjoin the enforcement by the defendants of an order of the Secretary of Agriculture made

November 19th, 1926, fixing maximum rates to be charged by the plaintiffs for their personal services in the buying and selling of livestock on commission. There was a final decree dismissing the bill and plaintiffs have appealed.

The jurisdiction of this court over the appeal is sustained by Section 316 of the Packers and Stock Yards Act (U. S. C. Title 7, Sec. 217), making applicable to such proceedings the procedure provided in the Act of October 22, 1913 (38 Statutes at Large 208, 219, 220, Chapter 32, C. C. Section 3279, 2 Fed. Statutes Annotated Second Edition Page 169, U. S. C. Title 28, Sec. 45), for suits for injunction against the orders of the interstate commerce commission. These provisions are incorporated in Subsection 5, Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (43 Statutes at Large, Chapter 229, Page 936; U. S. C. Title 28, Sec. 345).

The judgment sought to be reviewed herein is dated December 31st, 1928, (Record p. 121). The application for the appeal was presented January 2, 1929, (Record pp. 132-5).

The nature of the case and rulings below were such as to bring the case within the jurisdictional provisions relied upon. From the amended petition (Record pp. 1-12), it appears that plaintiffs sought to enjoin the enforcement of the order made by the Secretary of Agriculture for reasons which may be briefly stated as follows:

1. The Packers and Stock Yards Act of 1921, in so far as it attempts to confer upon the Secretary of

Agriculture the power to regulate and fix the charges made by live stock commission salesmen for their personal services is contrary to the Fifth Amendment to the Constitution of the United States, in that it seeks to deprive them of their liberty and property without due process of law.

2. The order sought to be enjoined is void, in that the Packers and Stock Yards Act gives the Secretary no power to issue an order to market agencies, such as appellants.

3. The findings and order of the Secretary, promulgating a new rate, were beyond the scope of the inquiry before the Secretary, as defined by the original notice thereof.

4. The order sought to be enjoined violates the provisions of the Fifth Amendment, depriving petitioners of their property without due process of law, in that it is manifestly unjust and unreasonable and provides for a confiscatory and noncompensatory schedule of rates and charges.

The answer and amendment thereto, (Record pp. 56-62-63) brought in issue these contentions of the plaintiffs and appellants. The opinion of the trial court, (Record pp. 101-20), was adverse thereto, and the final decree (Record p. 121) dismissed the bill of the plaintiffs and appellants and denied the injunctive relief sought. The contentions of appellants as originally made in the pleadings were preserved by the assignment of errors filed upon appeal to this Court, (Record p. 123).

The jurisdiction is sustained by the opinion of this Court in *Stafford v. Wallace,* 258 U. S. 495, where the procedure was identical with that followed in this case, and wherein this Court said:

> "Section 316 of the Packers and Stockyards Act of 1921 makes applicable to suits for injunction against the orders of the Secretary of Agriculture the same procedure, original and appellate, provided in the Act of October 22, 1913 (38 Stat. At L. 208, 219, 220, Chap. 32, Comp. Stat. Sec. 3279, 2 Fed. Stat. Anno. 2d ed. p. 169), for suits for injunction against the orders of the Interstate Commerce Commission. The latter act gives a right to a direct appeal to this court from the granting or refusing an interlocutory injunction. Hence the appeals herein are properly prosecuted."

Respectfully submitted,

JAMES M. BECK,
FRANCIS A. BROGAN,
ALFRED G. ELLICK,
ANAN RAYMOND,

Attorneys for Appellants.

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CHARLES ELMO

In the

SUPREME COURT of the UNITED STATES

OCTOBER TERM 1929

No. 45

TAGG BROS. & MOORHEAD, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

FRANCIS A. BROGAN,
ALFRED G. ELLICK,
ANAN RAYMOND,
Attorneys for Appellants.

JAMES M. BECK,
Washington, D. C., of Counsel.

THE COCKLE PRINTING CO., LAW BRIEFS, OMAHA, NEB.

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In the

SUPREME COURT of the UNITED STATES

OCTOBER TERM 1929

No. 45

TAGG BROS. & MOORHEAD, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

The opinion below is reported in 29 Fed. (2d.) 750. Paragraph 1 of Rule 12 has heretofore been complied with.

STATEMENT OF THE CASE.

January 16, 1926, appellants filed with the Secretary of Agriculture a schedule of live stock commission rates at Omaha, known herein as Tariff No. 2 (R. 13), amending Tariff No. 1 (R. 10) theretofore in effect. January 25, 1926, the Secretary suspended Tariff No. 2 and ordered a hearing as to its reasonableness (R. 20-3). November 19, 1926, he issued an order (R. 23-42) under the Packers and Stock Yards Act (Ch. 64, 42 Statutes at Large 165; U. S. C. 1925, Title 7, Ch. 9) permanently

suspending Tariff No. 2, and prescribing in lieu thereof a new schedule effective January 1, 1927 (afterward changed to February 1). Appellants, market agencies affected by said order, instituted proceedings in the court below to set aside said order and enjoin its enforcement. The proceedings were referred (R. 52) to a Special Master, who recommended (R. 57-145) a decree permanently enjoining the enforcement of the schedule of rates prescribed by the Secretary. The cause thereupon coming before the court upon the evidence, the report, and the appellees' exceptions thereto, the Court filed an opinion (R. 164-80) and entered a decree (R. 181) dismissing the petition of the appellants and dissolving the temporary injunction theretofore granted. Timely appeal was taken to this Court by all of the plaintiffs and intervenors.

There are presented for the consideration of this Court the following questions:

(1) Whether the Packers and Stock Yards Act, insofar as it purports to authorize the Secretary of Agriculture to fix the commissions charged by appellants for the buying and selling of live stock, is unconstitutional.

(2) Whether the Act gives the Secretary power to issue a rate making order to market agencies, such as appellants.

(3) Whether the order violates the provisions of the Fifth Amendment, depriving appellants of their property without due process of law, in that the rate prescribed therein is unjust, unreasonable, non-compensatory and confiscatory.

The statutes involved are set out in an appendix hereto.

THE PLEADINGS.

The amended petition (R. 1) filed by three appellants with whom all other market agencies at Omaha joined by intervention (R. 53), after reciting the jurisdictional and a brief outline of the preliminary facts, alleged that such order is illegal and void for the following reasons (R. 4-9):

(a) The Packers and Stock Yards Act does not give the Secretary any power to issue an order to market agencies such as appellants at the conclusion of any hearing before him, his authority in that respect applying only to the owners and operators of stockyards and not to market agencies.

(b) By the terms of Section 306 (e) of the Act, and by the terms of the order of suspension of January 25, 1926, the lawful scope of the inquiry did not extend beyond the question whether Tariff No. 2, insofar as in excess of Tariff No. 1, was unlawful or was unjust, unreasonable or discriminatory.

(c) The rates and charges prescribed by the said order are unjust and illegal in that they will not provide sufficient remuneration to repay appellants their expenses and a reasonable and just compensation for their services, and the enforcement of the order will have the effect of depriving appellants of their property

without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States; in other words, the schedule prescribed by the Secretary's order is non-compensatory, confiscatory and therefore illegal and void.

(d) The evidence presented to the Secretary was not sufficient to establish that either Tariff No. 1 or Tariff No. 2 was unjust, unreasonable and discriminatory, or to establish that the schedule prescribed in the order of November 19, 1926, would adequately compensate appellants for their services and for the disbursements made in rendering same.

(e) That the Secretary's order, insofar as it seeks to compel appellants, if they wish to continue in business, to render the services required and expected by their customers, and necessary to enable them to continue in business, at a rate fixed by the Secretary, is violative of the rights of appellants and their customers under the Fifth Amendment in that it deprives them of their freedom of contract and forbids them to sell their services at a price satisfactory to them and their customers; and that so much of the Packers and Stock Yards Act as authorizes the Secretary to prescribe appellants' rates and charges for the personal service rendered by them to their customers, violates the Fifth Amendment in that it deprives appellants of their property and liberty without due process of law. That if the

Act can be interpreted as conferring any power upon the Secretary to fix maximum rates to be charged by appellants for their personal services, then so much of the Act as purports to confer such power is null and void as in excess of the power granted to the Federal Government by the Constitution of the United States. That the power to fix maximum commissions for personal services is not a regulation of commerce within the meaning of the Constitution, nor is conferred by either the commerce clause or any other provision therein.

The petition then alleges irreparable injury and the right to equitable relief (R. 7-9). The prayer (R. 9) is that the order of November 19, 1926, be found and declared null and void and be set aside and that the appellees, including the Secretary, the Attorney General and the local District Attorney, be enjoined from its enforcement and from cancelling appellants' registrations as market agencies or enforcing the penalty sections of the Act.

Pursuant to the prayer a temporary injunction was granted (R. 43) and on March 15, 1927, the same was continued pending final decree.

The answer (R. 44-9) filed by all defendants admits the jurisdictional averments of the amended petition; admits the filing by appellants of Tariff No. 2 and the order of suspension thereof; says that the recitals of the amended petition concerning the contents of the order of November 19, 1926, are not a complete statement of its contents and prays reference to the order itself as to its

contents, meaning and legal effect; and as to the merits, says:

(a) That the recitals as to the power conferred upon the Secretary are conclusions of law, but denies that the order is illegal or void for that or any other reason.

(b) That the recitals in the amended petition as to the scope of the order of suspension are conclusions of law, but denies that the order of November 19, 1926, is void for that or any other reason.

(c) That while the allegations as to the non-compensatory and confiscatory effect of the order of November 19, 1926, are either conclusions of law or statements of fact irrelevant to the validty of the order, nevertheless admits that the schedule contained in the order, will result in an aggregate reduction in the gross returns received by appellants; but denies each and every other allegation and alleges that the aggregate reduction is grossly exaggerated by the allegations of the appellants.

(d) That the allegations as to the sufficiency of the evidence before the Secretary to establish that either Tariff No. 1 or Tariff No. 2 was unjust, unreasonable or discriminatory are inadequate and erroneous statements of the legal effect of the evidence at the hearing and as such are mere conclusions of law and irrelevant and immaterial to the validity of the Secretary's order; but that such allegations are none the less denied, and defendants further allege that the evidence presented

at the said hearing was sufficient to warrant the Secretary's finding that Schedule No. 2 was unjust, unreasonable and discriminatory. That with respect to the allegation that the evidence was insufficient to show that the rates prescribed by the order of November 19, 1926, would adequately compensate appellants, the same is an inadequate and erroneous statement of the meaning or legal effect of said evidence and as such is a statement of legal conclusions and is furthermore immaterial to the validity of the order, but defendants nevertheless deny that the evidence so presented was not sufficient to show that the rates prescribed by the Secretary would adequately compensate appellants and that the evidence presented warranted him in fixing the schedule prescribed in the order of November 19, 1926.

(e) Denies that the order of the Secretary violates the Fifth Amendment for the reasons outlined in subparagraph "e" of the above summary of the petition, or for any other reason.

The prayer of the answer is a general one for dismissal and costs.

The appellants filed motion (R. 50) for reference to a Special Master, which was sustained (R 52) with directions to consider the evidence, both that submitted before the Secretary and any additional evidence introduced by either party, and report back to the court findings and conclusions of fact.

The report of the special master (R. 57-145), after an extensive review of the proceedings and of the evi-

dence, Findings of Fact Nos. 1-58 (R. 74-112) concluded, on the facts, by finding that the rates prescribed by the Secretary in his order of November 19, 1926, are confiscatory, for extensive reasons based upon the previous findings (Finding of Fact No. 59, R. 112). As a conclusion of law the master held that the Packers and Stock Yards Act, if it can be construed as vesting in the Secretary of Agriculture the right to determine and prescribe maximum charges to be made by appellants for their services in the buying and selling of live stock, is, as to so much of the Act as seeks to vest in Secretary such power, unconstitutional (R. 117-44).

The appellees filed exceptions to the report (R. 145-62), excepting to sundry specified findings on thirty-three grounds (R. 145-61). In Exception No. 34 (R. 161) they excepted to the report as a whole on account of its failure to find facts in harmony with the Secretary's order. The exceptions conclude by excepting to the master's conclusion of law as to the unconstitutionality of the Act (R. 163), and pray that their exceptions be allowed; that the report of the special master be wholly disapproved, and that the cause of the appellants be dismissed for failure of the evidence to sustain their material allegations, with general equitable relief (R. 163). Neither in the opinion (R. 164-80) nor in the decree (R. 181) did the court deal specifically with the report or the exceptions thereto; none of the exceptions was allowed specifically, nor was the report disapproved in whole or in any part.

———o———

THE ORDER OF NOVEMBER 19, 1926.

The order of the Secretary which is the basis of these proceedings is set out in full (R. 23-42). Some features of it require special notice herein.

Paragraphs 1-5 are devoted to a summary of the proceedings to that date, and a statement of the "basic rates" of Tariff No. 2.

Paragraph 6 sets out the increases in Tariff No. 2 as compared with Tariff No. 1. The order then defines the problem of the Secretary, to arrive at a rate as nearly as possible approximating that which would obtain under conditions of reasonable normal competition, and sets out the alleged basis upon which the rate about to be ordered is arrived at (par. 8, R. 28): "therefore the present problem is approached with the thought that commission rates yielding a reasonable profit above normal cost are reasonable."

The order then refers to the alleged elimination by appellants of competition among themselves, and says: "If the owners of the 68 firms and corporations composing the respondents can, through a committee, or by whatever machinery they see fit to adopt, arrive at the rates to be charged the shippers, a disinterested Governmental agency can fairly arrive at such rates". In the next paragraph appellants' contention, that rates may not be fairly ascertained without reference to the varying degrees of ability and experience of those engaged in the business, is answered by stating that appellants have "by requiring each to charge the same rates regardless of individual efficiency, placed themselves on the same level." (pp. 41-42).

The order then selects 1925 as a typical year, and proceeds to classify appellants into volume groups based on relative volume of rail receipts, as follows:

Group A, each firm of which handled above 3500 cars of livestock.
Group B, each firm of which handled between 2000 and 3500 cars of live stock.
Group C, each firm of which handled between 1000 and 2000 cars of live stock.
Group D, each firm of which handled between 500 and 1000 cars of live stock, and
Group E, each firm of which handled less than 500 cars of live stock.

The receipts by rail among the 61 firms doing business at the end of 1925 were divided as follows:

Group A— 8 firms handling above 3500 cars rec'd 37%.
Group B— 7 firms handling 2000 to 3500 cars rec'd 18%.
Group C—17 firms handling 1000 to 2000 cars rec'd 27%.
Group D—18 firms handling 500 to 1000 cars rec'd 15%.
Group E—11 firms handling under 500 cars rec'd 3%.

The order then proceeds to a summary of average owner income, that is, the amount which the owner or owners of each firm have left for personal use after paying the expenses of the business, whether this income was received as drawings, salaries, profits or all combined; attempts to state gross commissions per car per species from Tariff No. 1 to 1925 rail receipts, and then attempts to arrive at a lowest, a highest and an average gross commission, with an average for the market for each species. Whether these averages are arrived at from group to group or firm to firm is not stated.

The Secretary then states (paragraph 14, R. 32) that in view of the fact that some firms operate entirely through employees with salaries fixed by bargaining, while others operate partially or entirely through owners whose salaries represent drawing accounts rather than bargained salaries and in many cases do not appear on the books, "it is impossible to contrast with the above stated per car commissions the cost of rendering the service, either as to individual firms or volume groups, without a distortion which renders the contrast valueless." The Secretary, nevertheless, proceeds to attempt the impossible by the device of setting up as to each species "an account showing the normal and reasonable cost per car of rendering the service." This is done, not by using averages, but by adopting a "normal" of costs to the firms "whose financial condition exhibits ordinary efficient management of their business."

This severance of the Gordian knot introduces an important phase of the question whether the order is confiscatory, and therefore deserves particular attention. An analysis of paragraphs 15-20 (R. 32-5) shows that, after stating that in setting up individual cost accounts, all expenses are allocated directly to the three species where possible and that in cases where it is not possible to allocate directly, allocation is made on the basis of gross income, the Secretary, none the less disregards actual expenses entirely, as well as the actual results in operation of salesmanship and the other factors whose "normal cost" is under investigation, and applies a purely theoretical normal of what the Secretary, or whatever subordinate drew the order for him, thought such normal

cost ought to be under the circumstances shown by the record. The first item of cost arrived at in this way is that of salesmanship, paragraphs 16-18. There, after referring to certain testimony of a shipper as to the number of cars of live stock which an ordinary salesman "could sell in a reasonably efficient manner in one year," the order refers to the cattle and hog salesmen in Group A as having "had the largest opportunity to display their ability as to those species;" while the sheep salesman in Group C are considered as having had the similar opportunity with reference to that species. This conclusion seems to be based entirely on the volume of live stock handled by the respective firms to which these salesmen were attached, as compared with the number of salesmen employed, without reference to any other circumstance. After stating that an average of the salesmen in these groups was 932 cars of cattle, 932 cars of hogs and 757 cars of sheep respectively, the Secretary finds that the fair market value of the services of a competent salesman is $5,000 as to cattle and sheep and $4,000 as to hogs, and that "upon the foregoing bases it is considered that a reasonable cost per car for salesmanship is $5 for cattle, $3 for hogs and $5 for sheep." Needless to say, this would mean averages per salesman per year of 1,000 cars of cattle, 1,333.33 cars of hogs and 1,000 cars of sheep.

Similarly, paragraph 19 (R. 34) is devoted to the expenses of advertising and other modes of business-getting and after a review of the lowest, highest and average percentage of gross commissions spent for business-getting by the several volume groups above referred to,

finds that 10% of gross commissions received is a reasonable expenditure for business getting—though the findings themselves show an average for all firms of 14.85% and also show that the higher the volume, the larger the percentage of expenditure for these purposes. This 10%, with some adjustment to produce round figures, is then applied to the average gross commission above referred to as an element in the so-called cost account. Whether the average expenditure or the 10% finally allowed is applied on a firm to firm or group to group basis does not, of course, appear.

Paragraph 20, p. 49 allows interest at 7% on the aggregate capital devoted to appellants' business. The order then proceeds, in the same paragraph and without further analysis of the other items, to summarize the cost account as follows:

Item	Cattle	Hogs	Sheep
Yardmen's Salary	$1.75	$1.50	$1.50
All other salaries	2.00	1.60	1.80
Travel, entertainm't, advertis'g, etc.	2.00	1.50	2.25
Overhead, including increased rental of $54,000	1.75	1.50	1.75
Exchange Assessments and Dues	.25	.25	.25
Total	$7.75	$6.35	$7.55
Salesmanship	5.00	3.00	5.00
Interest	.50	.50	.50
Total Cost	$13.25	$9.85	$13.05

It will be noted at once that no "normal" is set up for depreciation, bad debts, investments such as exchange memberships which do not happen to appear on the books, going value of business, or supervision; and

that the validity of the finding as to the "normal cost" of salesmanship and business-getting depends on the soundness of the bases used in arriving at the "normals" above set out.

The order then proceeds (R. 36) to a comparison of average gross commissions and the above found "reasonable expenses," to arrive at the resultant profit; refers to profit on investment made by the producers of live stock; refers again to the "monopolistic power of fixing charges arbitrarily without the usual attendant economy of minimizing expenditures for business-getting" alleged to be exercised by appellants herein, and makes the following observation (which seems also to lack premises to support it): "When rates so fixed in a business which has been subjected to public regulation yield the percentages of profit hereinbefore shown, they are unreasonable *per se.*"

Paragraphs 23-25 (R. 37-8) are then devoted to the alleged complications in Tariff No. 2, including a criticism of the half-rate allowed yard traders and exchange members, and paragraph 26 (R. 38) contains a finding that the rates and charges shown in said tariff are unjust, unreasonable and discriminatory. The order concludes by determining "that the following are schedules of just and reasonable charges," setting out the rate schedule now sought to be enjoined, and makes the usual order for publication and for the suspension of all rates in excess thereof, together, of course, with a permanent suspension of Tariff No. 2. The level of rates prescribed is materially below both Tariff No. 1 and Tariff No. 2; and the order is so framed as to permit charging a full commission to yard traders and exchange members.

THE EVIDENCE.

The evidence originally consisted of over 2000 typewritten pages oral testimony and about 125 exhibits, some of them of great bulk. The oral testimony has in this record been reduced to 264 (R. 181-360, 714-98), and the exhibits to 386 printed pages (R. 361-714, 798-831), of which the separate audits of the individual appellants occupy 299 pages (Exs. 7-65, R. 400-699). It is manifestly impossible herein to do more than refer briefly to this evidence, with some tabulation of the financial data in the audits.

As to the question of the constitutionality of the Act, if it be so construed as to permit the Secretary to fix commissions charged by appellants for personal services, there is no disputed question of fact; that is, it is conceded that the business of appellants is that of rendering personal service by private agreement with their customers. The record as a whole, however, showing in detail how appellants' business is carried on, is eloquent of the difficulties and inequalities inseparable from such regulation.

On the issue of confiscation, the following is a brief summary of or reference to those portions of the record dealing with appellants' contention that the Secretary's order is invalid because of

(a) Erroneous methods, in disregard of the undisputed facts, used in arriving at items of "normal cost."

(b) Items of normal cost omitted, which must be included to make the rate base valid.

(c) The unreasonableness of the rate prescribed considering the situation disclosed by the record generally.

1. Selling Costs.

Selling costs per car are set up in the Secretary's order (R. 34) at $5.00 for cattle, $3.00 for hogs and $5.00 for sheep; selling services are fixed for rate making purposes at a "normal" of $5,000.00 per year for cattle and sheep and $4,000.00 per year for hogs. Hence the rate is based upon averages per salesman per year of 1,000 cars of cattle, 1,333.33 cars of hogs and 1,000 cars of sheep.

This portion of the order finds support in the record only in the opinion of witness Mollin, (R. 262-266), a shipper but never a livestock commission broker, that a competent salesman could handle from 2,500 to 3,500 cars of hogs per year and 3,500 to 5,000 cars of cattle if he had them to sell.

At the hearing before the master the Government offered the deposition of William E. Reed (R. 791) to the effect that a salesman receiving $6,000.00 per year ought to sell not less than 3,000 cars per year. This testimony was, of course, not part of the record before the Secretary. The witness stated, however, that the number of cars a salesman can sell in a year depends on

the market and the class of live stock; that there is no such thing as knowing in advance how many cars a salesman can sell in a year; that his firm does not have salesmen who sell that many cars a year; and that there is no such thing on the market, (R. 798). On the other hand the testimony of witnesses Tomlinson, (R. 240-242), Wilkerson, (R. 278-82), Burke, R. 273) and Johnson (R. 298-304), called by the government at the hearing before the Secretary, and that of witnesses Stryker (R. 759-61), Tagg (R. 768-70, 772), Wood (R. 778) and Laverty (R. 784) is undisputed to the effect that there is no such thing in the live stock commission business as normal selling performance; that the number of cars sold per year is neither the measure of the employed salesman's value, nor is the character of the livestock commission business such as to permit such a method of cost accounting. Witness Shortell, who directed the making of the government's audits (Ex. 7-65, R. 400-699) declined (R. 320, 348-53-357) to express any opinion as to salaries being too large or too small, and that cost of selling from his point of view would have to be computed entirely upon the figures shown by the books.

It therefore becomes of some importance to test the application of these theoretical selling salaries to the actual operation of appellants' business during the year selected as a test year. This is done in Exhibit 104 (R. 798). There, purely as a means of testing the results of this salary schedule in actual operation, all owners' salaries are eliminated, whether more or less

than the amount found to be the normal salary of an ordinarily efficient salesman, these amounts substituted as salaries for resident owners. Employee salesmen's salaries are left as they appear in Exhibits 7-65. On this basis the total selling salaries for the 56 firms covered by Exhibit 104 is $424,333.33 for resident owners and $417,916.82 for employee salesman, or a total of $842,250.15.

The substitution in the accounting shown by Exhibits 7-65 of the Secretary's normal selling salaries, leaving other expenses exactly as shown by the books, results in a total cost to all the appellants of conducting their business of $2,036,722.02, resulting in a deficit to all the petitioners, as shown in Exhibit 105, (R. 798) of $53,288.60, or of $115,450.79, if the increase on sales to traders and speculators authorized in the Secretary's order is excluded, as the undisputed evidence would require it to be. Exhibit 105 also shows the result as to each of the individual petitioners and indicates that of the fifty-six firms covered by the exhibit only twenty would realize profits on the one basis and only fifteen on the other. These results are put on a per car basis in Exhibit 111 (R. 798) showing a per car deficit of 42 cents on the one basis and 91 cents on the other, considering the firms as a whole, with per car deficits running far beyond such average in a large number of individual cases.

If it be objected that these exhibits do not fairly apply the Secretary's "normal" to the business of appellants because such "normal" is there applied, regardless of the actual volume of sales, the comparison

between the Secretary's theoretical normal and the actual facts can be carried farther, by computing per car selling cost on the basis of actual owners' salaries and actual employees' salaries. In the following table this is done on two bases: that of actual selling salaries, in which salaries paid owner-salesmen are used, except that in the cases of 10 or 11 firms where no salaries for owners appear on the books, the government's "normal" is adopted; and "Basis B", in which all owners' salaries in excess of the Secretary's "normal" are reduced to those figures, while smaller owners' salaries are taken from the books. This basis is modified in one or two instances where the volume handled by the firm is low; for example, in firm 16 (Exhibit 22, R. 477) owners' salaries are divided in two on account of the low volume. Likewise in firm 51 the sole owner's drawing account of $2,025 is allowed to stand, although a "normal salary" of $4,000.00 would raise his per car selling cost on hogs to $4.49 instead of the $2.70 shown. In all cases commissions paid as salaries, (for example, Exhibit 53, R. 634), are excluded.

On that basis the per car selling costs for the fifty-six firms, for the several species and for all species, with the totals and averages for the entire market, are as follows:

PER CAR SELLING COS

Firm No.	OWNER - SALESMEN SALARIES ACTUAL Cattle	Hogs	Sheep	Total	OWNER - SALESMEN SALARIES BASIS B Cattle	Hogs	Sheep	Total	EMPLO Cattle	Ho
1	$ 9,000.00	$ 7,000.00	$	$16,000.00	$ 5,000.00	$ 4,000.00	$	$ 9,000.00	$ 5,700.00	$ 2,1
2	9,000.00			9,000.00	8,000.00			8,000.00		2,7
*3		4,000.00		4,000.00		4,000.00		4,000.00	10,380.00	
4	10,200.00	2,500.00		12,700.00	9,200.00	2,500.00		11,700.00	4,825.00	3,71
*5	5,000.00	4,000.00		9,000.00	5,000.00	4,000.00		9,000.00	2,640.00	
6	12,180.00	7,320.00		19,500.00	9,380.00	7,320.00		16,700.00		2,4
7			7,000.00	7,000.00			5,000.00	5,000.00		
8	9,000.00			9,000.00	9,000.00			9,000.00	6,000.00	5,62
9	21,600.00			21,600.00	10,000.00			10,000.00	7,475.00	3,6
10	1,800.00	1,375.00		3,175.00	1,800.00	1,375.00		3,175.00	3,000.00	
*11	2,500.00	2,000.00		4,500.00	2,500.00	2,000.00		4,500.00	1,500.00	
12	7,889.30			7,889.30	7,889.30			7,889.30	2,621.45	2,2
*13	19,200.00			19,200.00	10,000.00			10,000.00	10,277.49	6,6
14	3,600.00			3,600.00	3,600.00			3,600.00	13,680.03	5,81
15	1,800.00			1,800.00	1,800.00			1,800.00	4,200.00	2,1
16	5,000.00	4,000.00		9,000.00	2,500.00	2,000.00		4,500.00		
*17	3,750.00			3,750.00	3,750.00			3,750.00		
*18									19,300.00	3,6
19	6,000.00	5,400.00		11,400.00	5,000.00	4,000.00		9,000.00	4,870.00	2,34
20	3,000.00	3,000.00		6,000.00	3,000.00	3,000.00		6,000.00	2,400.00	
21	8,200.00			8,200.00	8,200.00			8,200.00		1,8
22	11,700.00	8,250.00		19,950.00	5,000.00	7,000.00		12,000.00	10,400.00	2,1
23									13,751.13	4,5
24	2,650.00	2,650.00		5,300.00	2,650.00	2,650.00		5,300.00		
*25	4,800.00	4,800.00		9,600.00	4,800.00	4,800.00		9 600.00	3,600.00	3,76
27	9,300.00			9,300.00	8,300.00			8,300.00	2,875.00	2,68
*28	4,999.92	10,800.00		15,799 92	4,999.92	4,000.00		8,999.92	15,600.00	4
29		4,000.00		4,000.00		4,000.00		4,000.00	9,800.00	2,79
30	10,800.00			10,800.00	10,000.00			10,000.00	2,400.00	7,93
*31									15,879.17	7,99
33	5,000.00			5,000.00	2,500.00			2,500.00	1,600.00	4,80
*34									13,800.00	6,72
35	6,000.00			6,000.00	5,000.00			5,000.00	3,037.50	3,00
36			5,000.00	5,000.00			2,500.00	2,500.00		
37	4,080.00			4,080.00	4,080.00			4 080.00	750.00	1,68
38		7,200.00		7,200.00		4,000.00		4,000.00	5,983.52	
39	11,100.00	7,200.00		18,300.00	8,000.00	4,000.00		12,000 00	7,550 00	4,50
40	4,800.00	4,800.00	4,800.00	14,400.00	4,800.00	4,800.00	4,800.00	14,400.00	3,000.00	
41	5,000.00			5,000.00	5,000.00			5 000.00		
42	10,000.00	4,000.00		14,000.00	10,000.00	4,000.00		14 000.00		
*43	10,800.00			10,800.00	5,000.00			5,000.00	10,500.00	5,62
44	6,000.00			6,000.00	5,000.00			5,000.00	3,000.00	3,90
45		3,333.00		3,333.00		2,666.66		2 666 66	3,600.00	1,03
46	4,416.66			4,416.66	4,416.66			4 416.66	13,408.33	6,12
47		2,750.00		2,750.00		2,750.00		2,750.00	4,555 00	
*48	17,700.00	6,600.00	6,600.00	30,900.00	13,300.00	4,000.00	5,000.00	22 300.00	4,950.00	2,40
49			6,300.00	6,300.00			6,300.00	6,300.00		
51		2,025.00		2,025.00		2,025.00		2,025.00	4,720.00	1,76
52		4,800.00		4,800.00		4,000.00		4,000.00	6,300.00	3,60

Firm No.	OWNER - SALESMEN SALARIES ACTUAL Cattle	Hogs	Sheep	Total	OWNER - SALESMEN SALARIES BASIS B Cattle	Hogs	Sheep	Total	EMPLOYEE - S SALARI Cattle	Hogs	
1	$ 9,000.00	$ 7,000.00	$	$16,000.00	$ 5,000.00	$ 4,000.00	$	$ 9,000.00	$ 5,700.00	$ 2,100.00	$
2	9,000.00			9,000.00	8,000.00			8,000.00		2,700.00	
*3		4,000.00		4,000.00		4,000.00		4,000.00	10,380.00		
4	10,200.00	2,500.00		12,700.00	9,200.00	2,500.00		11,700.00	4,825.00	3,710.00	
*5	5,000.00	4,000.00		9,000.00	5,000.00	4,000.00		9,000.00	2,640.00		
6	12,180.00	7,320.00		19,500.00	9,380.00	7,320.00		16,700.00		2,400.00	
7			7,000.00	7,000.00			5,000.00	5,000.00			
8	9,000.00			9,000.00	9,000.00			9,000.00	6,000.00	5,625.00	
9	21,600.00			21,600.00	10,000.00			10,000.00	7,475.00	3,600.00	
10	1,800.00	1,375.00		3,175.00	1,800.00	1,375.00		3,175.00	3,000.00		
*11	2,500.00	2,000.00		4,500.00	2,500.00	2,000.00		4,500.00	1,500.00		
12	7,889.30			7,889.30	7,889.30			7,889.30	2,621.45	2,287.88	
*13	19,200.00			19,200.00	10,000.00			10,000.00	10,277.49	6,600.00	10
14	3,600.00			3,600.00	3,600.00			3,600.00	13,680.03	5,816.78	
15	1,800.00			1,800.00	1,800.00			1,800.00	4,200.00	2,100.00	
16	5,000.00	4,000.00		9,000.00	2,500.00	2,000.00		4,500.00			
*17	3,750.00			3,750.00	3,750.00			3,750.00			
*18									19,300.00	3,600.00	9
19	6,000.00	5,400.00		11,400.00	5,000.00	4,000.00		9,000.00	4,870.00	2,340.00	
20	3,000.00	3,000.00		6,000.00	3,000.00	3,000.00		6,000.00	2,400.00		
21	8,200.00			8,200.00	8,200.00			8,200.00		1,800.00	
22	11,700.00	8,250.00		19,950.00	5,000.00	7,000.00		12,000.00	10,400.00	2,100.00	
23									13,751.13	4,505.99	4
24	2,650.00	2,650.00		5,300.00	2,650.00	2,650.00		5,300.00			
*25	4,800.00	4,800.00		9,600.00	4,800.00	4,800.00		9 600.00	3,600.00	3,767.50	
27	9,300.00			9,300.00	)			8,300.00	2,875.00	2,687.50	
*28						4,000.00		8,999.92	15,600.00	44.44	6,
29	FOLD OUT IS TOO LARGE TO BE FILMED					4,000.00		4,000.00	9,800.00	2,795.00	
30					)			10,000.00	2,400.00	7,937.50	
*31									15,879.17	7,999.92	
33				5,000.00	2,500.00			2,500.00	1,600.00	4,800.00	
*34									13,800.00	6,720.00	
35	6,000.00			6,000.00	5,000.00			5,000.00	3,037.50	3,000.00	
36			5,000.00	5,000.00			2,500.00	2,500.00			
37	4,080.00			4,080.00	4,080.00			4 080.00	750.00	1,680.00	
38		7,200.00		7,200.00		4,000.00		4,000.00	5,983.52		5,0
39	11,100.00	7,200.00		18,300.00	8,000.00	4,000.00		12,000.00	7,550.00	4,500.00	
40	4,800.00	4,800.00	4,800.00	14,400.00	4,800.00	4,800.00	4,800.00	14,400.00	3,000.00		
41	5,000.00			5,000.00	5,000.00			5,000.00			
42	10,000.00	4,000.00		14,000.00	10,000.00	4,000.00		14 000.00			
*43	10,800.00			10,800.00	5,000.00			5,000.00	10,500.00	5,625.00	2,8
44	6,000.00			6,000.00	5,000.00			5,000.00	3,000.00	3,900.00	
45		3,333.00		3,333.00		2,666.66		2 666 66	3,600.00	1,030.00	
46	4,416.66			4,416.66	4,416.66			4 416.66	13,408.33	6,120.00	
47		2,750.00		2,750.00		2,750.00		2,750.00	4,555.00		
*48	17,700.00	6,600.00	6,600.00	30,900.00	13,300.00	4,000.00	5,000.00	22 300.00	4,950.00	2,400.00	
49			6,300.00	6,300.00			6,300.00	6,300.00			
51		2,025.00		2,025.00		2,025.00		2,025.00	4,720.00	1,760.00	
52		4,800.00		4,800.00		4 000.00		4 000.00	6 300.00	3,600.00	
53	10,875.00	6,000.00		16,875.00	9,875.00	4,000.00		13,875.00	1,840.00		
54			4,800.00	4,800.00			4,800.00	4 800.00	4,720.00	2,140.00	
56	3,600.00	3,000.00		6,600.00	3 600.00	3,000.00		6 600.00	4,571.65		
57	6,000.00			6,000.00	6 000.00			6,000.00		2,1 .00	
58	10,400.00			10,400.00	9,200.00			9,200.00	2,400.00	4,2 .00	
60	2,405.29			2,405.29	2,405.29			2,405.29			

(TABLE A HERE)

These results are no less striking in their variance from the Secretary's "normal" when applied to the firms having the greater "opportunity to display their ability," as discussed in the Secretary's order (R. 33). The 55 firms shown in the foregoing table handled a total of 127,064.76 cars, or an average of 2310.27 per firm per year. The following table, therefore, tabulates per car selling cost on both the "actual basis" and "Basis B" for firms handling 2,000 or more cars per year, adding thereto such firms as Nos. 6, 7 and 58 (R. 425, 432, 690), which come within a few cars of that minimum and are otherwise more or less normal in their volume and operation.

OVER 200

Firm No.	Cattle	OWNER - SALESMEN SALARIES ACTUAL Hogs	Sheep	Total	
1	$ 9,000.00	$ 7,000.00	$.....	$16,000.00	$
4	10,200.00	2,500.00	.....	12,700.00	
6	12,180.00	7,320.00	.....	19,500.00	
7	.....	.....	7,000.00	7,000.00	
8	9,000.00	.....	.....	9,000.00	
9	21,600.00	.....	.....	21,600.00	1
13	19,200.00	.....	.....	19,200.00	1
14	3,600.00	.....	.....	3,600.00	
18	.....	.....	.....	.....	
19	6,000.00	5,400.00	.....	11,400.00	
22	11,700.00	8,250.00	.....	19,950.00	
23	.....	.....	.....	.....	
25	4,800.00	4,800.00	.....	9,600.00	
27	9,300.00	.....	.....	9,300.00	
28	4,999.92	10,800.00	.....	15,799.92	
29	.....	4,000.00	.....	4,000.00	
30	10,800.00	.....	.....	10,800.00	1
31	.....	.....	.....	.....	
34	.....	.....	.....	.....	
38	.....	7,200.00	.....	7,200.00	
39	11,100.00	7,200.00	.....	18,300.00	
40	4,800.00	4,800.00	4,800.00	14,400.00	
43	10,800.00	.....	.....	10,800.00	
46	4,416.66	.....	.....	4,416.66	
48	17,700.00	6,600.00	6,600.00	30,900.00	1
56	3,600.00	3,000.00	.....	6,600.00	
58	10,400.00	.....	.....	10,400.00	
	$195,196.58	$78,870.00	$18,400.00	$292,466.58	$14

OVER 2000 CARS—PER CAR SELLING COST 1925

SALESMEN'S ACTUAL		OWNER - SALESMEN SALARIES BASIS B				EMPLOYEE - SALESMEN SALARIES				TOTAL SELL AC	
Sheep	Total	Cattle	Hogs	Sheep	Total	Cattle	Hogs	Sheep	Total	Cattle	Hogs
$.....	$16,000.00	$ 5,000.00	$ 4,000.00	$.....	$ 9,000.00	$ 5,700.00	$ 2,100.00	$.....	$ 7,800.00	$14,700.00	$ 9,100.00
.....	12,700.00	9,200.00	2,500.00	.....	11,700.00	4,825.00	3,710.00	.....	8,535.00	15,025.00	6,210.00
.....	19,500.00	9,380.00	7,320.00	.....	16,700.00	.....	2,400.00	.....	2,400.00	12,180.00	9,720.00
7,000.00	7,000.00	.....	.....	5,000.00	5,000.00	.....	.....	2,700.00	2,700.00	.....	.....
.....	9,000.00	9,000.00	.....	.....	9,000.00	6,000.00	5,625.00	3,300.00	14,925.00	15,000.00	5,625.00
.....	21,600.00	10,000.00	.....	.....	10,000.00	7,475.00	3,600.00	2,100.00	13,175.00	29,075.00	3,600.00
.....	19,200.00	10,000.00	.....	.....	10,000.00	10,277.49	6,600.00	10,448.28	27,325.77	29,477.49	6,600.00
.....	3,600.00	3,600.00	.....	.....	3,600.00	13,680.03	5,816.78	.....	19,496.81	17,280.03	5,816.78
.....	.....	.....	.....	.....	.....	19,300.00	3,600.00	9,700.00	32,600.00	19,300.00	3,600.00
.....	11,400.00	5,000.00	4,000.00	.....	9,000.00	4,870.00	2,340.00	.....	7,210.00	10,870.00	7,740.00
.....	19,950.00	5,000.00	7,000.00	.....	12,000.00	10,400.00	2,100.00	.....	12,500.00	22,100.00	10,350.00
.....	.....	.....	.....	.....	.....	13,751.13	4,505.99	4,206.22	22,463.34	13,751.13	4,505.99
.....	9,600.00	4,800.00	4,800.00	.....	9,600.00	3,600.00	3,767.50	.....	7,367.50	8,400.00	8,567.50
.....	9,300.00	8,300.00	.....	.....	8,300.00	2,875.00	2,687.50	.....	5,562.50	12,175.00	2,687.50
.....	15,799.92	4,999.92	4,000.00	.....	8,999.92	15,600.00	44.44	6,227.46	21,871.90	20,599.92	10,844.44
.....	4,000.00	.....	4,000.00	.....	4,000.00	9,800.00	2,795.00	.....	12,595.00	9,800.00	6,795.00
.....	10,800.00	10,000.00	.....	.....	10,000.00	2,400.00	7,937.50	.....	10,337.50	13,200.00	7,937.50
.....	.....	.....	.....	.....	.....	15,879.17	7,999.92	225.00	24,104.09	15,879.17	7,999.92
.....	.....	.....	.....	.....	.....	13,800.00	6,720.00	.....	20,520.00	13,800.00	6,720.00
.....	7,200.00	.....	4,000.00	.....	4,000.00	5,983.52	.....	5,000.00	10,983.52	5,983.52	7,200.00
.....	18,300.00	8,000.00	4,000.00	.....	12,000.00	7,550.00	4,500.00	.....	12,050.00	18,650.00	11,700.00
4,800.00	14,400.00	4,800.00	4,800.00	4,800.00	14,400.00	3,000.00	.....	.....	3,000.00	7,800.00	4,800.00
.....	10,800.00	5,000.00	.....	.....	5,000.00	10,500.00	5,625.00	2,810.00	18,935.00	21,300.00	5,625.00
.....	4,416.66	4,416.66	.....	.....	4,416.66	13,408.33	6,120.00	.....	19,528.33	17,824.99	6,120.00
6,600.00	30,900.00	13,300.00	4,000.00	5,000.00	22,300.00	4,950.00	2,400.00	.....	7,350.00	22,650.00	9,000.00
.....	6,600.00	3,600.00	3,000.00	.....	6,600.00	4,571.65	.....	.....	4,571.65	8,171.65	3,000.00
.....	10,400.00	9,200.00	.....	.....	9,200.00	2,400.00	4,740.00	.....	7,140.00	12,800.00	4,740.00
$18,400.00	$292,466.58	$142,596.58	$57,420.00	$14,800.00	$214,816.58	$22,596.32	$97,734.63	$46,716.96	$357,047.91	$407,792.90	$176,604.63

OVER 2000 CARS—PER CAR

TOTAL SELLING SALARIES ACTUAL				TOTAL SELLING SALARIES BASIS B				CARS HANDLED			
Cattle	Hogs	Sheep	Total	Cattle	Hogs	Sheep	Total	Cattle and Calves	Hogs	Sheep	Total
$14,700.00	$ 9,100.00	$.....	$23,800.00	$10,700.00	$ 6,100.00	$.....	$16,800.00	1,233.31	1,186.44	27.24	2,446.9
15,025.00	6,210.00	.....	21,235.00	14,025.00	6,210.00	.....	20,235.00	2,489.08	1,658.66	58.64	4,206.3
12,180.00	9,720.00	.....	21,900.00	9,380.00	9,720.00	.....	19,100.00	1,481.88	416.98	8.86	1,907.7
.....	.....	9,700.00	9,700.00	.....	.....	7,700.00	7,700.00	.....	.....	1,917.12	1,917.1
15,000.00	5,625.00	3,300.00	23,925.00	15,000.00	5,625.00	3,300.00	23,925.00	3,538.86	1,299.75	412.74	5,251.3
29,075.00	3,600.00	2,100.00	34,775.00	17,475.00	3,600.00	2,100.00	23,175.00	2,602.44	1,876.73	130.49	4,609.6
29,477.49	6,600.00	10,448.28	46,525.77	20,277.49	6,600.00	10,448.28	37,325.77	4,141.91	1,183.00	1,222.26	6,547.1
17,280.03	5,816.78	.....	23,096.81	17,280.03	5,816.78	.....	23,096.81	1,484.70	1,254.06	11.62	2,750.3
19,300.00	3,600.00	9,700.00	32,600.00	19,300.00	3,600.00	9,700.00	32,600.00	3,061.39	1,134.54	2,204.79	6,400.7
10,870.00	7,740.00	.....	18,610.00	9,870.00	6,340.00	.....	16,210.00	933.79	1,199.95	5.00	2,138.7
22,100.00	10,350.00	.....	32,450.00	15,400.00	9,100.00	.....	24,500.00	2,070.29	1,301.09	135.01	3,506.3
13,751.13	4,505.99	4,206.22	22,463.34	13,751.13	4,505.99	4,206.22	22,463.34	937.18	797.30	682.37	2,416.8
8,400.00	8,567.50	.....	16,967.50	8,400.00	8,567.50	.....	16,967.50	712.34	1,811.57	10.48	2,534.3
12,175.00	2,687.50	.....	14,862.50	11,175.00	2,687.50	.....	13,862.50	1,767.04	328.08	14.16	2,109.2
20,599.92	10,844.44	6,227.46	37,671.82	20,599.92	4,044.44	6,227.46	30,871.82	3,215.80	1,820.78	421.69	5,458.2
9,800.00	6,795.00	.....	16,595.00	9,800.00	6,795.00	.....	16,595.00	1,355.39	765.10	13.89	2,134.3
13,200.00	7,937.50	.....	21,137.50	12,400.00	7,937.50	.....	20,337.50	2,389.39	1,556.79	6.07	3,952.2
15,879.17	7,999.92	225.00	24,104.09	15,879.17	7,999.92	225.00	24,104.09	1,784.34	1,071.59	63.14	2,919.0
13,800.00	6,720.00	.....	20,520.00	13,800.00	6,720.00	.....	20,520.00	1,701.90	1,720.89	63.62	3,486.4
5,983.52	7,200.00	5,000.00	18,183.52	5,983.52	4,000.00	5,000.00	14,983.52	841.70	1,581.93	380.08	2,803.7
18,650.00	11,700.00	.....	30,350.00	15,550.00	8,500.00	.....	24,050.00	4,239.91	2,311.39	21.10	6,572.4
7,800.00	4,800.00	4,800.00	17,400.00	7,800.00	4,800.00	4,800.00	17,400.00	758.79	938.26	537.15	2,234.2
21,300.00	5,625.00	2,810.00	29,735.00	15,500.00	5,625.00	2,810.00	23,935.00	2,463.85	2,333.75	275.52	5,073.1
17,824.99	6,120.00	.....	23,944.99	17,824.99	6,120.00	.....	23,944.99	2,043.49	1,069.06	150.78	3,263.3
22,650.00	9,000.00	6,600.00	38,250.00	18,250.00	6,400.00	5,000.00	29,650.00	2,787.78	1,281.19	1,063.06	5,132.0
8,171.65	3,000.00	.....	11,171.65	8,171.65	3,000.00	.....	11,171.65	1,855.35	507.42	3.20	2,365.9
12,800.00	4,740.00	.....	17,540.00	11,600.00	4,740.00	.....	16,340.00	1,748.11	228.99	21.13	1,998.2
$07,792.90	$176,604.63	$65,116.96	$649,514.49	$355,192.90	$155,154.63	$61,516.96	$571,864.49	53,640.01	32,635.29	9,861.21	96,136.5

R CAR SELLING COST 1925

DLED		SELLING SALARIES PER CAR ACTUAL				SELLING SALARIES PER CAR BASIS B			
Sheep	Total	Cattle	Hogs	Sheep	All Species	Cattle	Hogs	Sheep	All Species
27.24	2,446.99	$11.91	$ 7.77	$ ——	$ 9.72	$ 8.67	$ 5.14	$ ——	$ 6.82
58.64	4,206.38	6.03	3.74	——	5.04	5.63	3.74	——	4.80
8.86	1,907.72	8.21	23.28	——	11.42	6.32	23.28	——	10.01
1,917.12	1,917.12	——	——	5.11	5.11	——	——	4.01	4.01
412.74	5,251.35	4.23	4.32	8.00	4.55	4.23	4.32	8.00	4.55
130.49	4,609.66	11.17	1.91	16.09	7.54	6.71	1.91	16.09	5.02
1,222.26	6,547.17	7.11	5.57	8.54	7.15	4.89	5.57	8.54	5.70
11.62	2,750.38	11.63	4.63	——	8.39	11.63	4.63	——	8.39
2,204.79	6,400.72	6.30	3.17	4.39	5.09	6.30	3.17	4.39	5.09
5.00	2,138.74	11.64	6.45	——	8.70	10.57	5.29	——	7.57
135.01	3,506.39	10.67	7.95	——	9.22	7.48	6.99	——	6.98
682.37	2,416.85	14.67	5.65	6.16	9.29	14.67	5.65	6.16	9.29
10.48	2,534.39	11.79	4.72	——	6.69	11.79	4.72	——	6.69
14.16	2,109.28	6.89	8.19	——	7.04	6.32	8.19	——	6.57
421.69	5,458.27	6.40	5.95	14.76	6.90	6.40	2.22	14.76	5.47
13.89	2,134.38	7.23	8.88	——	7.77	7.23	8.88	——	7.77
6.07	3,952.25	5.52	5.09	——	5.34	5.19	5.09	——	5.14
63.14	2,919.07	8.89	7.40	3.56	8.22	7.21	7.40	3.56	7.22
63.62	3,486.41	8.16	3.90	——	5.91	8.16	3.90	——	5.91
380.08	2,803.71	7.06	4.48	13.15	6.48	7.06	4.48	13.15	6.48
21.10	6,572.40	4.39	5.06	——	4.61	3.69	4.11	——	3.81
537.15	2,234.20	10.27	5.11	8.91	7.78	10.27	5.11	8.91	7.78
275.52	5,073.12	8.64	2.41	10.19	5.86	6.29	2.41	10.19	4.71
150.78	3,263.33	8.72	5.72	——	7.33	8.72	5.72	——	7.33
1,063.06	5,132.03	8.12	7.01	6.20	7.45	6.54	4.99	4.68	5.77
3.20	2,365.97	4.40	5.91	——	4.67	4.40	5.91	——	4.67
21.13	1,998.23	7.32	20.69	——	8.77	6.63	20.69	——	8.17
9,861.21	96,136.51	7.60	5.41	6.60	6.75	6.62	4.75	6.23	5.94

(TABLE B HERE)

In most firms owners act as salesmen, and the question arises whether there can be any such thing as a "normal salary" for such owner. But in the case of four branch firms, Nos. 18, 23, 31 and 34, salaries are fixed by bargaining and the selling cost per car is as follows:

	EMPLOYEE - SALESMEN SALARIES				
Firm No.	Cattle	Hogs	Sheep	Total	
18	$19,300.00	$ 3,600.00	$ 9,700.00	$32,600.00	$
23	13,751.13	4,505.99	4,206.22	22,463.34	
31	15,879.17	7,999.92	225.00	24,104.09	
34	13,800.00	6,720.00	.....	20,520.00	
	$62,730.30	$22,825.91	$14,131.22	$99,687.43	$

BRANCHES

Total	TOTAL SELLING SALARIES ACTUAL				CARS HANDLED				SELLING SALARIES PER CAR ACTUAL			
	Cattle	Hogs	Sheep	Total	Cattle and Calves	Hogs	Sheep	Total	Cattle	Hogs	Sheep	All Species
2,600.00	$19,300.00	$ 3,600.00	$ 9,700.00	$32,600.00	3,061.39	1,134.54	2,204.79	6,400.72	6.30	3.17	4.39	5.09
2,463.34	13,751.13	4,505.99	4,206.22	22,463.34	937.18	797.30	682.37	2,416.85	14.67	5.65	6.16	9.29
4,104.09	15,879.17	7,999.92	225.00	24,104.09	1,784.34	1,071.59	63.14	2,919.07	8.89	7.40	3.56	8.22
0,520.00	13,800.00	6,720.00	.....	20,520.00	1,701.90	1,720.89	63.62	3,486.41	8.16	3.90	.....	5.91
9,687.43	$62,730.30	$22,825.91	$14,131.22	$99,687.43	7,484.81	4,724.32	3,013.92	15,223.05	8.38	4.83	4.68	6.54

From Schedule No. 1, attached to each of Exhibits 7-65, we can ascertain the number of owner and employee salesmen and arrive at the average sales per year for each salesman, for each firm and for each of the three species. These averages, with the average for each species, both as to each of the 56 firms included in Exhibit 104 and to the firms as a whole, are as follows:

Firm No.	OWNER - SALESMEN Cattle	Hogs	Sheep	EMPLOYEE-SALESMEN Cattle	Hogs	Sheep	Cattl
1	1	1	.....	2	1	.....	3
2	2	.....	.....	.....	1	.....	2
3	2	1	.....	1	1/2	.....	3
4	2	1/2	.....	2	1 1/2	.....	4
5	1	1	.....	1 1/2	.....	.....	2 1/2
6	2	2	.....	1	.....	.....	3
7	.....	.....	1	.....	.....	1	.....
8	2	.....	.....	1 1/2	2	1	3 1/2
9	2	1	.....	1 2/3	1	1	3 2/3
10	1	1	.....	2	.....	.....	3
11	1/2	1/2	.....	1/2	1	.....	1
12	2	.....	.....	1	1 1/2	.....	3
13	2	.....	.....	2	2	2	4
14	1	.....	.....	3	1	.....	4
15	1	.....	.....	2	1	.....	3
16	1	1	.....	.....	.....	.....	1
17	1/2	.....	.....	1/2	.....	.....	1
18	.....	.....	.....	5	1	2	5
19	1	1	.....	2	1	.....	3
20	1	1	.....	1	.....	.....	2
21	2	.....	.....	.....	1	.....	2
22	1	2	.....	3	1	.....	4
23	.....	.....	.....	3	1	1	3
24	1	1	.....	.....	.....	.....	1
25	1	1	.....	1	1 1/2	.....	2
27	2	.....	.....	1 1/5	1 1/6	.....	3 1/5
28	1	1	.....	4 5/12	1	2	5 5/12
29	.....	1/2	.....	2	1	.....	2
30	2	.....	.....	1	2	.....	3
31	.....	.....	.....	3 1/2	1 3/4	.....	3 1/2
32	1 1/2	.....	.....	.....	5/6	.....	1 1/2
33	9/10	.....	.....	3/4	2	.....	1 13/2
34	.....	.....	.....	4	2	.....	4
35	1	.....	.....	1 7/24	1	.....	2 7/24
36	.....	.....	1	.....	.....	.....	.....
37	1	.....	.....	3/4	1	.....	1 3/4
38	.....	1	.....	2	.....	1	2
39	1 5/12	1	.....	3	2	.....	4 5/12
40	1	1	1	2	.....	.....	3
41	2	.....	.....	.....	.....	.....	2
42	2	1	.....	.....	.....	.....	2
43	1	.....	.....	3	1 11/12	1	4
44	1	.....	.....	2	2	.....	3
45	2/3	.....	.....	1	5/12	.....	1 2/3
46	11/12	.....	.....	3 5/6	2	.....	4 3/4
47	.....	1	.....	2	.....	.....	2
48	3	1	1	2	1	.....	5
49	.....	.....	1 3/4	.....	5/12	.....	.....
51	.....	.....	.....	1 5/6	1	.....	1 5/6
52	.....	1	.....	2	1	.....	

SMEN	TOTAL SALES FORCE				CARS HANDLED				AVERAGE PER SALESMAN			
Sheep	Cattle	Hogs	Sheep	All Species	Cattle and Calves	Hogs	Sheep	All Species Total	Cattle	Hogs	Sheep	All Species General
.....	3	2	.....	5	1,233.31	1,186.44	27.24	2,446.99	411.10	593.22	.....	489.39
.....	2	1	.....	3	830.79	398.03	4.24	1,233.06	415.38	398.03	.....	411.02
.....	3	1 1/2	.....	4 1/2	657.56	1,068.92	11.91	1,738.39	219.19	712.60	.....	386.31
.....	4	2	.....	6	2,489.08	1,658.66	58.64	4,206.38	622.27	829.33	.....	701.06
.....	2 1/2	1	.....	3 1/2	726.73	516.37	12.69	1,255.79	290.69	516.37	.....	358.79
.....	3	2	.....	5	1,481.88	416.98	8.86	1,907.72	493.96	208.49	.....	381.54
1	.....	.....	2	2	.....	.....	1,917.12	1,917.12	.....	.....	958.56	958.56
1	3 1/2	2	1	6 1/2	3,538.86	1,299.75	412.74	5,251.35	1,011.01	649.87	412.74	807.90
1	3 2/3	2	1	6 2/3	2,602.44	1,876.73	130.49	4,609.66	709.75	938.36	130.49	691.44
.....	3	1	.....	4	1,027.75	145.83	8.22	1,181.80	342.92	145.83	.....	295.45
.....	1	1 1/2	.....	2 1/2	500.05	278.53	1.22	779.80	500.05	557.06	.....	519.86
.....	3	1 1/2	.....	4 1/2	844.30	277.61	4.18	1,126.09	281.43	185.07	.....	250.24
2	4	2	2	8	4,141.91	1,183.00	1,222.26	6,547.17	1,035.47	591.50	611.13	818.39
.....	4	1	.....	5	1,484.70	1,254.06	11.62	2,750.38	371.17	1,254.06	.....	550.07
	3	1	.....	4	577.49	522.78	4.82	1,105.09	192.49	522.78	.....	276.27
	1	1	.....	2	144.22	274.27	.18	418.67	144.22	274.27	.....	209.33
	1	.....	.....	1	488.38	55.68	.46	544.52	488.38	.....	.....	544.52
	5	1	2	8	3,061.39	1,134.54	2,204.79	6,400.72	612.28	1,134.54	1,102.38	800.09
	3	2	.....	5	933.79	1,199.95	5.00	2,138.74	311.26	599.97	.....	427.75
	2	1	.....	3	667.46	759.55	23.54	1,450.55	333.73	759.55	.....	483.52
	2	1	.....	3	860.15	243.65	27.74	1,131.54	430.07	243.65	.....	377.18
	4	3	.....	7	2,070.29	1,301.09	135.01	3,506.39	514.06	433.69	.....	500.91
	3	1	1	5	937.18	797.30	682.37	2,416.85	312.39	797.30	682.37	483.37
	1	1	.....	2	146.87	328.88	2.26	478.01	146.87	328.88	.....	239.00
	2	2 1/2	.....	4 1/2	712.34	1,811.57	10.48	2,534.39	356.17	724.63	.....	562.75
	3 1/5	1 1/6	.....	4 11/30	1,767.04	328.08	14.16	2,109.28	552.20	281.61	.....	483.78
	5 5/12	2	2	9 5/12	3,215.80	1,820.78	421.69	5,458.27	596.76	910.39	210.84	579.42
	2	1 1/2	.....	3 1/2	1,355.39	765.10	13.89	2,134.38	677.69	510.06	.....	609.82
	3	2	.....	5	2,389.39	1,556.79	6.07	3,952.25	796.46	778.38	.....	790.45
	3 1/2	1 3/4	.....	5 1/4	1,784.34	1,071.59	63.14	2,919.07	509.81	612.34	.....	556.01
	1 1/2	5/6	.....	2 1/6	620.26	122.19	4.78	747.23	413.51	146.63	.....	320.24
	1 13/20	2	.....	3 13/20	533.67	593.37	3.05	1,130.09	323.43	296.68	.....	309.61
	4	2	.....	6	1,701.90	1,720.89	63.62	3,486.41	425.47	860.44	.....	581.07
	2 7/24	1	.....	3 7/24	637.97	802.46	7.08	1,447.51	278.33	802.46	.....	439.73
	.....	.....	1	1	4.05	3.72	241.72	249.49	.....	.....	241.72	249.49
	1 3/4	1	.....	2 3/4	655.37	247.56	7.91	910.84	374.49	247.56	.....	331.21
	2	1	1	4	841.70	1,581.93	380.08	2,803.71	420.85	1,581.93	380.08	700.93
	4 5/12	3	.....	7 5/12	4,239.91	2,311.39	21.10	6,572.40	959.80	770.46	.....	885.04
	3	1	1	5	758.79	938.26	537.15	2,234.20	252.93	938.26	537 15	446.84
	2	.....	.....	2	1,157.65	98.86	3.69	1,260.20	578.82	.....	.....	630.10
	2	1	.....	3	672.83	873.91	2.24	1,548.98	336.41	873.91	.....	516.32
	4	1 11/12	1	6 11/12	2,463.85	2,333.75	275.52	5,073.12	615.96	1,216.30	275.52	733.46
	3	2	.....	5	1,211.16	424.40	12.56	1,648.12	403.88	212.20	.....	329.62
.....	1 2/3	5/12	.....	2 1/12	686.57	212.17	8.62	907.36	411.54	509.21	.....	291.53
.....	4 3/4	2	.....	6 3/4	2,043.49	1,069.06	150.78	3,263.33	430.21	534.53	.....	483.45
.....	2	1	.....	3	441.26	548.39	5.04	994.69	441.26	274.19	.....	331.56
.....	5	2	1	8	2,787.78	1,281.19	1,063.06	5,132.03	557.55	640.59	1,063.06	641.50
.....	.....	5/12	1 3/4	2 1/6	.....	1.00	306.38	307.38	.....	.....	175.07	.....
.....	1 5/6	2	.....	3 5/6	449.07	1,400.45	2.64	1,852.16	244.94	700.22	.....	483.17
.....	2	2	.....	4	761.68	1,115.87	23.60	1,901.15	380.84	557.93	.....	475.28
.....	3	1	.....	4	1,113.10	681.08	4.34	1,798.52	371.03	681.08	.....	449.63
.....	2 1/6	1	1	4 1/6	495.46	244.16	142.49	882.11	228.67	244.16	142.49	211.71
.....	2 7/24	1	.....	3 7/24	1,855.35	507.42	3.20	2,365.97	809.42	507.42	.....	718.77
.....	2	7/10	.....	2 7/10	507.61	317.59	8.43	833.63	253.80	453.70	.....	308.75

FOLD OUT IS TOO LARGE TO BE FILMED

7-6
sa
ea
sp
sp
hi

(TABLE D HERE)

It will thus be seen that what the average salesman on the Omaha market actually sells is not 1000 cars of cattle and calves, 1500 cars of hogs or 1000 cars of sheep, but 488.52 cars of cattle or calves, 592.52 cars of hogs, and 573.44 cars of sheep. Moreover, if we are to imagine an ideal firm with one salesman for each species, each selling the "normals" established by the Secretary, we would have a sales record for that firm of 1000 cars of cattle and calves, 1500 cars of hogs and 1000 cars of sheep, or 3500 cars with an average over all species for the three salesmen of 1166.66 cars, instead of the 528.40 cars which reflects actual performance over all species. While the selection of the 27 "successful" firms used in the analysis for firms handling "2,000 or more" cars would raise all these averages somewhat, yet, they would still fall far short of the "normal" used by the Secretary. Only two firms have an average for cattle, only one an average for hogs and only two an average for sheep which compares with that adopted by the Secretary as a normal for rate fixing purposes. In other words, in arriving at such "normal" the Secretary has used, not normal, usual or ordinary performance, but unusual, extraordinary and maximum performance.

2. Advertising, Business Getting and Other Expense.

The Secretary found (R. 35)that expenditures in excess of 10% of gross commissions for advertising or other business getting are unreasonable and unlawful for rate-fixing purposes. Appellants contend that there is in the record nowhere any substantial evidence of unreasonable, excessive, illegal or wasteful expenditures for these purposes. No witness criticized any specific

expenditure made by any specific firm. Witness Tomlinson (R. 243) expressed the opinion that advertising has been carried too far but did not particularize further. Witness Shortell, (R. 348-53), the government's auditor, made no attempt to arrive at any normal or reasonable basis of expense for advertising, business getting, etc. The government's principal witness on the question of office management was witness Hopkins, (R. 291-4) and the effect of his testimony was that the expenses found on the books are necessary in order to maintain the service to shippers; that gradual changes in methods for the shippers' benefit create greater expenses, which can not be cut without cutting the service. The testimony of witness Stryker, (R. 732-7) shows a constant effort, extending over a period of 40 years, to reduce expense and eliminate the unnecessary. It also indicates an average business in 1925 of 2246.64 cars per firm per annum, as compared with 1941 per firm per annum in 1910.

Exhibit 104, (R. 79) shows total advertising of $220,707.09 and travel and entertainment $104,556.93, or a total of $325,264.02, or $2.54 per car business getting expense, as compared with the $2.00 for cattle, $1.50 for hogs and $2.25 for sheep allowed in the Secretary's order (R. 35). The Secretary's basis extended for the several species on the basis indicated in Exhibit 103 (R. 798) would produce a "normal" of all species of $1.85 per car. That is, the order allows 69 cents per car less than the actual expenditure, without competent proof of abnormal, unreasonable or excessive expenditures.

3. Going Concern Value.

The testimony of witness Tagg (R. 189-766), Tomlinson (R. 244), Hopkins (R. 290-5), Shortell (R. 321-3-6), Stryker (R. 741-51), and Laverty (R. 779-81, 784), which is undisputed, indicates that there is, inhering in an established live stock commission firm, a going concern value not found in a newly established business, and that this value is of such tangible character that it is frequently handed down from father to son.

4. Additional Depreciation.

Although depreciation was not set up in the Secretary's order as a separate item of basic cost, Exs. 7-C5, showed depreciation of $5,661.94, while Ex. 106, (R. 798) which is not disputed, shows that 33 firms out of 56 took no depreciation on their books, the total thereof not included in Exs. 7-65 or 104 being $6,164.92.

5. Additional Investment.

The government's auditor, witness Shortell, included in Exs. 7-65 only live stock exchange memberships actually appearing on the books. Those not on the books had a fair value in 1925 of $4,000.00 each, or a total of $312,000.00, as shown by Exhibit 107, (R. 798) not reflected in the government's audits or in the costs shown in appellants' Exhibit 103-4-5.

6. Bad Debts.

Neither the rate base (R. 35-6) nor the government's audits included any allowance for bad debts or other unpredictable losses, witness Shortell testifying (R. 313, 319) that he viewed the livestock business as a

cash business "and there is no need of a bad account." The undisputed testimony, however, shows that there are necessary incidental losses in handling the business, such as sales to customers who never pay for the stock, or losses on livestock repossessed, (R. 766).

It may be true that some of the items enumerated are relatively unimportant and almost negligible, inasmuch as an allowance for a return upon the going concern value, the additional depreciation and additional investment would make only a slight addition to the return which should be allowed these market agencies. But if the Court sustains the powers of the Secretary to fix rates, and thereby classes these market agencies with public utilities, it follows that erroneous methods of rate-making will vitiate and make illegal the results achieved; since the effect of the aggregate of all the items, large and small, is to deprive the petitioners of reasonable compensation for their personal services.

7. Supervision.

The testimony of witnesses Hopkins (R. 283-95), Tagg (R. 767) and Wood (R. 776) shows conclusively that supervision of both selling and office work is a separate phase of appellants' expense, whether taken care of by an owner-manager, employee-manager, or not set up on the books at all. Eleven firms have office managers. Salaries and per car cost, with a proportionate allocation to each species so as to produce a species average per car for the eleven firms, is as follows:

SUPERVISION—PER CAR

Firm No.	CARS HANDLED Cattle	Hogs	Sheep	Total	MANAGERS' SALARIES PAID Cattle	Hogs	Sheep	Total	PER CAR COST Cattle	Hogs	Sheep	All Species
4	2,489.08	1,658.66	58.64	4,206.38	$ 3,550.04	$ 2,364.49	$ 85.47	$ 6,000.00	$1.42	$1.42	$1.42	$1.42
8	3,538.86	1,299.75	412.74	5,251.35	3,032.52	1,113.74	353.74	4,500.00	.85	.85	.85	.85
13	4,141.91	1,183.00	1,222.26	6,547.17	3,321.28	951.67	977.05	5,250.00	.80	.80	.80	.80
18	3,061.39	1,134.54	2,204.79	6,400.72	1,674.01	620.38	1,205.61	3,500.00	.54	.54	.54	.54
23	937.18	797.30	682.37	2,416.85	1,398.43	1,185.21	1,021.65	3,605.29	1.49	1.49	1.49	1.49
25	712.34	1,811.57	10.48	2,534.39	1,349.13	3,531.03	19.84	4,800.00	1.89	1.89	1.89	1.89
28	3,215.80	1,820.78	421.69	5,458.27	8,682.20	4,974.36	1,143.40	14,799.96	2.70	2.70	2.70	2.70
31	1,784.34	1,071.59	63.14	2,919.07	1,941.82	1,286.81	71.37	3,300.00	1.13	1.13	1.13	1.13
34	1,701.90	1,720.89	63.62	3,486.41	2,050.24	2,073.12	76.64	4,200.00	1.20	1.20	1.20	1.20
43	2,463.85	2,333.75	275.52	5,073.12	5,245.20	4,968.26	586.54	10,800.00	2.12	2.12	2.12	2.12
48	2,787.78	1,281.19	1,063.06	5,132.03	3,911.12	1,797.46	1,491.42	7,200.00	1.40	1.40	1.40	1.40
TOTAL	26,834.43	16,113.02	6,478.31	49,425.76	$36,155.99	$24,866.53	$ 7,032.73	$67,955.25	$1.34	$1.54	$1.08	$1.38

And if we limit the comparison to the 4 branch firms, 18, 23, 31 and 34, on the theory that there only is the salary of a manager fixed by bargaining, so as to determine the market value of supervision, the per-car cost on the same basis is as follows:

SUPERVISION COST PER CAR—BRANCHES

Firm No.	CARS HANDLED Cattle	Hogs	Sheep	Total	MANAGERS' SALARIES PAID Cattle	Hogs	Sheep	Total	PER CAR COST Cattle	Hogs	Sheep	All Species
18	3,061.39	1,134.54	2,204.79	6,400.72	$ 1,674.01	$ 620.38	$ 1,205.61	$ 3,500.00	$0.54	$0.54	$0.54	$0.54
23	937.18	797.30	682.37	2,416.85	1,398.43	1,185.21	1,021.65	3,605.29	1.49	1.49	1.49	1.49
31	1,784.34	1,071.59	63.14	2,919.07	1,941.82	1,286.81	71.37	3,300.00	1.13	1.13	1.13	1.13
34	1,701.90	1,720.89	63.62	3,486.41	2,050.24	2,073.12	76.64	4,200.00	1.20	1.20	1.20	1.20
TOTAL	7,484.81	4,724.32	3,013.92	15,223.05	$ 7,064.50	$ 5,165.52	$ 2,375.27	$14,605.29	$0.94	$1.09	$0.78	$0.96

TABLE "E"

8. Other Cost Items Disregarded.

(a) The Secretary's rate base (R. 35-6) allows "for all other salaries," cattle $2.00, hogs $1.60 and sheep $1.80 per car. What items as shown on the books are accepted and what rejected is not stated, nor is there any discussion of the subject by the auditor Shortell or elsewhere in the record; and it is impossible to ascertain from the order or elsewhere how these figures are arrived at or how the allocation was made At any rate the mean for all species on the basis of 71,419.48 cars of cattle and calves, 45,643.50 cars of hogs and 10,749.01 cars of sheep, extended and divided by the total of 127,811.99 cars would be $1.82 per car, while actual expenditures, as shown by Exhibit 104 (R. 798) are $2.18 per car, or 36 cents of undisputed expense per car eliminated without affirmative evidence to justify taking a theoretical rather than an actual figure.

(b) The order allows for overhead, including the increased rental, at $1.75 for cattle, $1.50 for hogs and $1.75 for sheep per car or a mean of $1.66 per car. Actual expense as shown by Exs. 7-65 and 104, (other deductions and additional rent as shown in Ex. 104), produce a mean of $2.01 per car or 35 cents per car for all species eliminated without affirmative evidence to justify doing so.

These figures are the more striking when it is recalled that the computations in the Secretary's order are based on car load receipts of about 110,000 cars instead of the actual totals, after converting truck-ins and drive-ins, of 127,811.99 thereby increasing the spread between actual figures and the Secretary's hypothetical ones.

9. Elimination of Appellants.

Without detailed analysis of the testimony, it is plain from even a casual reading of the record that the intention of the order herein questioned was to lower rates to a point where a number of appellants would be required to quit business, on the theory that the remainder would so benefit from the resulting increase of business to them as to make the rate profitable to the survivors. That is, the theory of the regulating authority was and is that there are too many firms operating in Omaha and that his right in fixing rates is to eliminate many of them. This theory the trial court in effect sustained in its opinion, (R. 175).

The burden of the testimony of witnesses Graham, (R. 198), Jordan (R. 202), Tomlinson (R. 229-33-38-40) and Mollin (R. 260-1, 265-6), representatives of shippers' associations, testifying for the government, was that there are too many commission firms and that if half of them were eliminated, the "meritorious" firms would still retain their customers and do business profitably. "Unfortunately," said witness Tomlinson, "some of the fit ones may fail," (R. 240).

On the other hand, witnesses Stryker, (R. 751, 758-9), Tagg (R. 767), Tomlinson (R. 238-40), Wood (R. 776) and Laverty (R. 779), indicated that the practical effect of the Secretary's rate, if it becomes permanent, will be to eliminate many of the existing agencies. That this conclusion is correct is graphically illustrated by the appellants' audits, Ex. 103-4-5-11-22-23-23a, R. 798), particularly the last three, showing the actual income to the

individual members of the appellant firms, under the Secretary's rates, after paying their actual expenses for the year 1925. We respectfully call to the Court's attention these exhibits, which speak for themselves.

10. Relation of Other Live Stock Markets.

The record shows that conditions at all markets are substantially uniform (R. 228-40, 251, 757). South Dakota shippers, for example, patronize the Sioux City, Omaha and Chicago markets, (R. 252). The principal factor determining the price of, for example, hogs is the Chicago market (R. 304). Notwithstanding Chicago and Sioux City have rates higher than Tariff No. 2, under which appellants operated during the pendency of the proceedings below, there was in 1926 and 1927 a decided tendency of shippers to patronize those markets. (R. 776). Ex. 112-16 (R. 799) show the rates charged at Chicago, St. Louis, Kansas City, Sioux City and Denver. They show a general rate level, especially at Chicago and Sioux City, not only much higher than the Secretary's order, but also on a whole higher than the rates in Tariff No. 2, initiated by appellants and suspended by the Secretary when the proceedings leading up to the present rate order were begun before him.

11. The Probable Effect of a Full Commission on Traders and Speculators Sales.

The order here in question was so framed as to permit appellants to charge full commission of traders and speculators doing business in the stockyards as a possible source of recouping the reduction imposed upon shipments generally. The record shows without

dispute (753, 764, 768, 771, 777, 780, 786, 788), that even if adopted by appellants, the authorized increase would result in no actual increase of revenue because (1) appellants would not increase the rate to traders and speculators, (2) even if they did, the business of the traders and speculators would be crippled to the point where it would produce no more revenue at the full rate than it would at the half rate. (3) If trading survived under higher rates, it would come out of shippers, anyway, because traders would lose by as much as their rates were increased.

12. The General Situation Disclosed by the Record.

The record shows without dispute that the Secretary undertook commission rate reduction at Omaha in response to complaints concerning the general economic and financial situation of shippers (R. 196, 199, 201, 226, 252, 255, 267). But it also appears from the same evidence, and without dispute, that in that situation commission charges are a minor, even a negligible factor. The controlling factor at all terminal markets is the concentrated buying power of the packers. (R. 229, 242). The commission charge is the smallest of the distribution costs, which altogether take up only 3 cents of the live stock purchaser's dollar, of which the broker's commission is about nine-tenths of one percent of the shippers proceeds, (R. 798 Ex. 108), as against 4.3 to 5.6 cents for freight alone. (R. 740). The reduction imposed by the Secretary's rate order amounts to approximately one-tenth of one per cent of the value of the product (R. 740). It would take at least a fifty per cent increase in Tariff No. 2 to affect the growers'

costs or stop the flow of live stock to a given market (R. 774). Shippers' costs vary between startling and altogether unpredictable limits; for example, Exhibit 89, (R. 706), shows the cost of producing a calf to vary between $19.46 and $82.69. Exs. 93, 94 and 95, (R. 708-13) contain additional data to the same effect. The minor importance of commission charges, as a factor in the livestock producer's general economic situation, is borne out also by his failure to complain concerning them. The associations, whose representatives testified before the Secretary, comprise less than 2% of western shippers. Hog shippers, and shippers of all species in the agricultural districts, made no complaint through associations or otherwise. Testimony (R. 737-40), as to almost uniform satisfaction of appellants' patrons with the rates initiated by appellants themselves, is not disputed.

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SPECIFICATION OF ERRORS. (R. 833)

1. The Packers and Stockyards Act of August 15, 1921, (Chapter 64, 42 Stat. at Large 159), insofar as it purports to authorize the Secretary of Agriculture to fix the commissions charged by commission men for the handling and selling of live stock in the stockyards, is invalid for the following reasons:

(a) It is not a regulation of interstate commerce within the meaning of the commerce clause of the constitution.

(b) Even if it be a regulation of commerce, yet the said portion of the statute and the action taken thereunder by the Secretary of Agriculture, are subject to the prohibition of the Fifth Amendment and are, therefore, void as an impairment of the liberty of contract guaranteed by such amendment, and constitute a taking of property without due process of law.

(c) Insofar as the said Act of Congress attempts to delegate to an executive official the power to fix the labor wages of commission men, it is also void, as the Constitution has not authorized Congress to delegate such a power to regulate the wages of labor for a personal service.

2. The Court erred in finding that the Packers and Stock Yards Act of 1921, Title II (Chapter 64, 42 Statutes at Large 159; U. S. C. 1925, Title 7, Chapter 9), gives to the Secretary of Agriculture the power to issue an order to market agencies, such as plaintiff, at the conclusion of any hearing before him, the only authority for the issuance of an order of such character being found in Section 310 of said Act, which, in respect to market agencies, provides only that the Secretary may determine and prescribe just and reasonable rates, charges and

practices to be thereafter observed, but the authority to issue an order applying only to the owners and operators of stockyards and not to market agencies.

4. The Court erred in failing and refusing to find and hold that the rates and charges prescribed by the Secretary's order of November 19th, 1926, are unjust and illegal, in that they will not provide sufficient remuneration to repay petitioners their lawful expenses and a reasonable and just compensation for their services, and the enforcement of the order will have the effect of depriving petitioners of their property without due process of law, contrary to provisions of the Fifth Amendment to the Constitution of the United States.

5. The Court erred in failing and refusing to hold that the evidence presented to the Secretary of Agriculture was not sufficient to show or to establish that the tariff prescribed in the order of November 19th, 1926, would adequately compensate petitioners for their services and for the usual and legitimate disbursements made in rendering same.

6. The Court erred in holding that the presumption as to the reasonableness of the actual costs of a utility, in the absence of affirmative evidence of waste, extravagence and excessiveness, does not apply to the plaintiffs or to the business carried on by them.

7. The Court erred in finding and holding that the Secretary of Agriculture in issuing the order of November 19, 1926, had before him sufficient evidence upon which to construct a rate base, and in finding and holding that the Secretary in issuing said order included in the rate bases all items of expense to the plaintiffs.

8. The Court erred in holding that the Secretary could not find or ascertain from the actual operation of the business carried on by plaintiffs any common ground of reasonable maximum charges.

9. The Court erred in finding and holding that there is such variation in the several items of out-of-pocket costs of the various plaintiffs as to afford no uniform basis for fixing their actual costs as a part of a rate base.

10. The Court erred in sustaining the Secretary of Agriculture in disregarding actual costs in favor of "A normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management in their business".

11. The Court erred in sustaining the finding of the Secretary of Agriculture that the reasonable cost of handling a car of live stock in 1925 on the Omaha market was $13.25 for cattle, $9.85 for hogs and $13.05 for sheep.

12. The Court erred in finding and holding that the Secretary's finding as to the selling cost per car was based on evidence as to the actual experience in plaintiffs' business and that said finding was within his power and discretion.

13. The Court erred in holding that not one, nor an average, of the cost figures disclosed by the evidence as to the actual operation of plaintiff's business could be accepted as a reasonable standard for rate making purposes.

14. The Court erred in refusing to set aside the finding of the Secretary as to selling costs.

15. The Court erred in failing and refusing to find that the practical application to the plaintiffs' business of the Secretary's finding as to the reasonable cost of selling per car showed the Secretary's order unjust and unreasonable.

16. The Court erred in holding and finding that a comparison of actual averages of costs expended by plaintiffs in their business was immaterial; in failing to give any significance to actual averages so found; and in holding that such averages had no tendency to show that the finding of the Secretary, as to reasonable costs, was erroneous.

17. The Court erred in sustaining the Secretary's finding as to "reasonable costs" of other items of expense and in sustaining the Secretary's refusal to be bound by the facts as to the actual operation of the business, in arriving at reasonable costs.

18. The Court erred in holding that it was the plaintiff's duty at the hearing before the Secretary to apprise him of all overhead cost items that should be taken into account in fixing a rate base.

19. The Court erred in holding that going concern value should not be an element of the rate base in a business such as plaintiffs'.

20. The Court erred in finding and holding that the allowance of the reasonable cost of business getting, which included advertising, by the Secretary of Agriculture, was reasonable and within his powers.

21. The Court erred in holding that the Secretary's failure, in arriving at reasonable costs, to allow for bad debts, supervision, additional invested capital, going concern value and depreciation should have been called to the Secretary's attention by the plaintiffs; and in holding that the Secretary's failure to include these items was immaterial and had no bearing on the issue as to whether or not the Secretary's rates were confiscatory.

22. The Court erred in holding that the confiscatory character of the rates prescribed by the Secretary could not be demonstrated in advance of their practical operation.

23. The Court erred in holding that the rates prescribed by the Secretary included a sufficient margin to cover the basic costs omitted by him.

24. The Court erred in disregarding the undisputed evidence as to the effect of the increase, authorized in the Secretary's order, in the rate prescribed for traders and speculators.

25. The Court erred in holding immaterial the undisputed evidence as to the practical effect of the Secretary's rates on the individual plaintiffs, and the undisputed evidence as to the inability of individual plaintiffs to transact business, except at a loss, thereunder.

26. The Court erred in disregarding and in finding immaterial the evidence adduced before the Special Master as to the practical application of the Secretary's rates;

in eliminating from consideration the undisputed evidence as to the effect of practical application of the cost items found and allowed by the Secretary; and in finding such evidence immaterial on account of the inclusion therein of cost items condemned by the Secretay's order, without affirmative proof of the excessiveness of the several cost items so condemned by him.

27. The Court erred in finding and holding that a rate for personal services, admittedly confiscatory as to plaintiffs doing a small amount of business, and as to many plaintiffs irrespective of the amount of their business, can be sustained by fixing the number of plaintiffs entitled to carry on the business, or by eliminating numerous plaintiffs for the purpose of increasing compensation to those remaining.

28. The Court erred in finding that the plaintiffs' attack upon the order of the Secretary was not sustained by the evidence.

29. The Court erred in dissolving the temporary injunction and in denying to plaintiffs a permanent injunction.

30. The Court erred in dismissing the petition of the plaintiffs and the petition in intervention of the intervening plaintiffs.

31. The Court erred in failing and refusing to sustain plaintiffs' motion to confirm the report of the Special Master and enter decree in accordance therewith.

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SUMMARY OF ARGUMENT.

I.

The Packers and Stock Yards Act, insofar as it purports to authorize the Secretary of Agriculture to fix commissions charged by commission men for the handling and selling of livestock in the stockyards is invalid because:

(1) It is not a regulation of interstate commerce within the meaning of the commerce clause of the Constitution.

(2) Even if it be a regulation of commerce, yet the said portion of the statute and the action taken thereunder by the Secretary of Agricultrue are subject to the prohibition of the Fifth Amendment, and are, therefore, void as an impairment of the liberty of contract guaranteed by such amendment and constitute the taking of property without due process of law.

(3) Insofar as said act of Congress attempts to delegate to an executive official the power to fix the labor wages of commission men, it is also void as the Constitution has not authorized Congress to delegate such power to regulate wages of labor for personal services.

II.

The Packers and Stock Yards Act confers upon the Secretary no power to issue an order and compel the observance of the rates prescribed by him.

III.

The rate prescribed by the Secretary is unreasonable, non-compensatory and confiscatory and therefore, unconstitutional and void.

1. The rate must insure the utilities regulated a fair return based on the value rather than the cost of the service.

2. Erroneous and unconstitutional methods and deductions are used in arriving at items of basic cost.

3. Theoretical cost bases are adopted, in disregard of actual costs, without evidence to show that the latter are unreasonable.

4. The "normal cost" schedule omits basic cost items essential to the formation of a valid rate base.

5. The order seeks in part to justify general rate reduction by authorizing an increase, which, under the undisputed evidence, can not and will not be realized.

6. The order selects the Omaha market, notwithstanding materially higher rates elsewhere under substantially similar conditions, and in disregard of the undisputed possibility of general rate fixation.

7. The order is based upon the erroneous, unconstitutional and palpably unjust theory of a rate level, which will eliminate many of appellants, leaving the remainder to enjoy the speculative benefits resulting therefrom.

8. The order is based upon irrelevant considerations of the economic situation of appellants' patrons.

9. The rates and charges prescribed in the order are non-compensatory, confiscatory, unreasonable, unjust and unconstitutional when tested by the general situation disclosed by the record.

ARGUMENT.

I.

THE PACKERS AND STOCK YARDS ACT IS UNCONSTITUTIONAL.

This question will be argued in a separate brief.

II.

THE PACKERS AND STOCKYARDS ACT CONFERS UPON THE SECRETARY NO POWER TO ISSUE AN ORDER TO COMPEL THE OBSERVANCE OF THE RATES PRESCRIBED BY HIM.

The proceedings before the Secretary were initiated under Section 306 (e) of the Act, which provides that after a hearing under a proceeding so initiated, the Secretary "may make such an order with reference thereto as would be proper in a proceeding initiated after it had become effective." Section 309 provides for the making of complaints with the Secretary, and sub-division (c) of the same section authorizes the Secretary to institute an inquiry on his own motion on any matter on which a complaint is authorized. In all of these preliminary sections there is an apparent reference to power to be conferred upon the Secretary by later provisions of the Act, and to be exercised after the hearings have been completed.

Section 310 contains the authority of the Secretary to take the final action in all rate cases. It provides in effect that when any of such hearings have been completed and the Secretary is of opinion that any rate, etc. "is or will be unjust, unreasonable or discriminatory," the Secretary

> "(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable and nondiscriminatory to be thereafter followed; and

"(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed."

Other sections give the Secretary power to prevent discrimination between localities, to deal with reparation for past transactions, and to prevent fraudulent or deceptive methods; but the foregoing comprise all the Secretary's rate-making powers.

Section 314 is as follows:

"(a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense."

It is made the duty of the various district attorneys under the direction of the Attorney General to prosecute for the recovery of these forfeitures.

Section 310, in which alone the rate-making power is conferred, suggests that Congress had some definite purpose in separating the powers conferred therein into two sub-divisions. It seems clear that the power conferred by sub-Section "(a)" was a declaratory or finding power only, and if it stood alone and should be given

the construction which it obviously ought to bear in the context, recourse would be had elsewhere for machinery for putting the declared rates into effect, and compelling their observance.

In sub-division (b) the power is conferred to make an order for the observance of the rates found and declared in sub-division (a) and forbidding the making or publishing of any other rates, and requiring compliance with the rates so determined.

It might well be that if sub-division (a) stood alone it could fairly be argued that it was intended thereby to confer upon the Secretary power to make the findings effective by prescribing that they should be observed thereafter. But in that case there would have been no occasion for enacting sub-division (b). We must find a purpose in making this formal separation of the two sub-divisions, and the only reasonable inference to be drawn from the manner in which the powers in this section are phrased is that the first was intended to be the fact finding or declaratory power, like the verdict of a jury, and the second was intended to include the power to issue an order to compel the observance of the rates, as the court enters a judgment upon the verdict.

If these two sub-divisions applied alike to appellants the inquiry we are now pursuing would be immaterial. But sub-division (a), because of its reference to the preceding portion of the section, does clearly include a reference to market agencies, which include commission men. The Secretary is authorized to determine

and prescribe what will be the just and reasonable rate or charge to be thereafter observed, that is, by the market agencies as well as the stockyard owners referred to.

But sub-division (b) does not include market agencies, either expressly or by any reasonable implication. It authorizes an order to be made on "such owner or operator." As defined in Section 301 of the Act, "stockyard owner" means any person engaged in the business of conducting or operating a stockyard, and "stockyard" in Section 302 is defined as any place, et cetera, conducted or "operated" as a public market. Neither "owner" nor "operator" is anywhere used in the Act as applying to those market agencies who are engaged in making sales on commission.

The conclusion would seem clear that in Section 310, Congress intended to give power to the Secretary to find and declare for stockyard owners and market agencies alike, but that the enforcement order for the observance of those rates could be directed only to the owner or operator of a stockyard.

This does not make futile the declaratory power contained in sub-division (a), nor would it by any means terminate this litigation. The declaration of the reasonable rate to be charged by a market agency would still be effective for purposes of reparation and would furnish prima facie proof in support of all such claims. But it does not subject the market agencies to the penalties prescribed by Section 314. This section, being penal in its nature, must be strictly construed and no person

would be liable for the penalties unless coming within its precise terms; and as the penalties are affixed for the violation of "any order made under the provision of Section 310" and as Section 310 does not authorize the making of any order against market agencies, it is clear that those penalties are not enforcible.

For the purposes of the temporary injunction against the enforcement of the penalties found in Section 314, and also a final and perpetual decree of injunction, the failure of Congress to authorize in Section 310 the making of an order against the market agencies expressly referred to in Section 314 justifies the demand of appellants for injunctive relief, leaving the question of the consequence of a declared rate and its effect on this litigation to be determined and disposed of on other principles.

It is fundamental that if any power of regulation is in doubt it must be resolved against the regulating authority. *Milwaukee Electric Ry. & Light Co. v. Railroad Commission of Wisconsin*, 238 U. S. 174; *Home Telephone & Telegraph Co. v. City of Los Angeles*, 211 U. S. 265, 273; *Puget Sound Traction Light & Power Co. v. Reynolds*, 244 U. S. 574.

Nor can the application of Sec. 310 (b) be inferred, *redendo singula singulis*, as argued below, from the use of the words "owner or operator." The power to enforce rates must be conferred by language unmistakably to that end; it cannot arise by inference or implication.

The situation is therefore a complete analogy to that existing under the Interstate Commerce Act before

the enactment of the Hepburn amendments in 1906, power to prescribe reasonable rates did not imply authority to compel their observance, but that for the purpose where it was held that the grant to the Commission of of enforcing the rate found reasonable by the Commission, resort must be had to suits for reparation or other judicial action. *Maximum Rate Cases*, 162 U. S. 184, 167 U. S. 479, 168 U. S. 144. The changes brought about by the 1906 amendments are discussed in *I. C. C. v. Ry. Co.*, 202 U. S. 613, 50 L. Ed. 1171. Illinois also had a transportation act modeled upon the Interstate Commerce Act, and the Supreme Court of that state held to the same effect in *People v. Ry. Co.*, 270 Ill. 232, 110 N. E. 321. The omission of market agencies from Section 310 (b) in which the machinery for putting declared rates into effect is set up, therefore leaves the power of the Secretary, as far as market agencies are concerned, with exactly the same limitations as that of the Interstate Commerce Commission before the Hepburn amendments were passed.

III.

THE RATE PRESCRIBED BY THE SECRETARY IS UNREASONABLE, NON-COMPENSATORY AND CONFISCATORY AND, THEREFORE, UNCONSTITUTIONAL AND VOID.

1. The Rate Must Insure Appellants Fair Return, Based on Value rather than Cost of Service.

By Section 316 of the Packers and Stockyards Act, the Congress made applicable thereto the provisions of all laws relating to the suspending or restraining, or the enforcement, operation or execution of the orders of the Interstate Commerce Commission. The Federal court's power of review is no less and the respect due the order no greater, than in a proceeding to enjoin an order of the Commission. By familiar precedents, therefore, the order herein may be set aside on any one of the following grounds:

a. That the order violates the Federal Constitution.

b. That in making the order the Secretary relied upon some mistake of law.

c. That the order is beyond the Secretary's statutory powers.

d. That the order, though in form correct, is in substance unreasonable.

e. That the Secretary disregarded undisputed testimony and the legal effect thereof.

f. That a full hearing was not had before the order was entered.

The question whether a rate order is so non-compensatory, unreasonable and unjust as to confiscate the property of those subjected to it, thereby amounting to

a deprivation without due process as defined by the Fifth Amendment, is always a judicial question, of the power to determine which the courts can not be deprived by any presumption, statutory or otherwise, and which involves a review of the facts in order properly to apply the law.

> *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287.
>
> *I. C. C. v. U. P. Ry. Co.*, 222 U. S. 541.

The rate here in question was fixed, not by the Legislature itself in the exercise of full legislative authority, but by an executive officer under delegated legislative power, pursuant to a legislative mandate contained in the very act making the delegation, which required the rate fixed to be reasonable, undiscriminatory, fair and just. The Secretary, therefore, must not only show a legal and constitutional warrant for imposing rates and bringing respondents within his regulatory power; he must not only proceed lawfully to the ascertainment of a reasonable rate; and he must not only accord to the appellants due process of law in arriving at the rate and in adopting the methods and classifications used as a basis for rate making; but he must, when all these steps have been taken, arrive at a rate which is fairly compensatory. To be fairly compensatory, of course, it must yield "fair return" to appellants; and fair return must be granted in an adequate and not a restricted sense. As this Court said in *Bluefield etc. v. Public Service Commission*, 262 U. S. 678:

> "The return should be reasonably sufficient to assure confidence in the financial soundness of the

utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions, generally."

To be confiscatory rates need not amount to a total deprivation of reward for services rendered. It is not every compensatory rate (if by compensatory is meant merely one yielding some revenue) that is non-confiscatory. Not every compensatory rate in this sense is just and reasonable; there is not even a presumption that it is. Not every non-confiscatory rate is just and reasonable enough to be compensatory in the legal and constitutional sense. The patron of a utility must pay what the service is worth to him as a patron and as a member of the general public, even though the utility might conceivably exist on a lower rate. The business is entitled to compensation for every element of reasonable expense connected with the service (the judge of what is reasonable expense being not the regulating body but the business itself) as well as the expense legitimately connected with the purposes for which it exists. Its right to exist in the status in which the regulatory body finds it when regulation begins is supported by every presumption of substantive and constitutional law; nor can any consideration, other than the intrinsic justice and reasonableness of the rate itself, be invoked to overcome these presumptions.

Banton v. Belt Line Ry. Corp., 268 U. S. 413;

Bellamy v. R. Co., 215 Fed. 18;

Monroe Gaslight & Fuel Co. v. Comm'n., 292 Fed. 139.

No presumption in favor of the findings of fact of a rate making body can preclude judicial inquiry, whether such findings are supported by evidence, in excess of the power conferred, in disregard of constitutional limitations, or otherwise amount to an abuse of power.

Manufacturers Ry. Co. v. U. S., 246 U. S. 457;
Skinner v. U. S. A., 249 U. S. 557;
Central R. Co. v. U. S. A., 257 U. S. 247.

Nor can any such presumptions be invoked to sustain findings unsupported by evidence, or made in disregard of undisputed facts.

Florida & C. Ry. Co. v. U. S., 234 U. S. 167;
Louisville etc. R. Co. v. U. S., 238 U. S. 1;
Akron & C. R. Co. v. U. S., 261 U. S. 184.

Of course, the respect accorded the findings of fact of a rate making body applies only to facts actually found, and can not prevent judicial inquiry into the contention that essential findings were not made.

State of Colorado v. U. S. A., 271 U. S. 153;

These findings constitute only a rebuttable presumption, which may be overcome by evidence submitted by the business affected, or taken from the entire record.

Meeker v. R. Co., 236 U. S. 412.

Entirely independent of any presumption, the Court has power to inquire as to the method whereby the rate making body reached its conclusions.

U. S. A. v. R. Co., 242 U. S. 208;

C. M. & St. P. R. Co. v. P. U. Comm., 274 U. S. 344.

Fundamentally, whether a rate is reasonable or confiscatory, is a mixed question of law and fact, and the Court must pass on the facts in order correctly to apply the law.

First National Bank v. Hartford, 273 U. S. 548;

Truax v. Carrigan, 257 U. S. 312;

K. C. So. R. Co. v. Albers, 223 U. S. 573;

Jones Nat'l Bank v. Yates, 240 U. S. 541;

No. P. R. Co. v. North Dakota, 236 U. S. 585.

Nor is the Court, in passing on the validity of a rate order, confined to the grounds given by the rate making body.

I. C. C. v. Ill. C. R. Co., 215 U. S. 452;

So. P. R. Co. v. I. C. C., 200 U. S. 536;

Louisville & C. R. Co. v. I. C. C., 184 Fed. 118.

In this case the Secretary based his entire finding upon a single factor, stated in paragraph 8 of his order (R. 28-9)—cost of service plus a reasonable profit. We submit that the record shows without dispute that he erred in all his findings as to all the principal elements of the service appellants render their patrons. That

aside, and without attempting a detailed study of rate making, we respectfully submit that a rate based entirely on cost of service, in a business such that the regulating authority concedes his inability to contrast income with actual cost without a distortion which renders the contrast valueless, sets up, at the beginning and as the very basis of the rate, a misleading and fallacious foundation, having no relation to the actual facts connected with the business; that cost of service, so ascertained, with "reasonable profit" added, adds the rate making authority's speculation to an inherently fallacious rate basis; and even when its fallacies are safeguarded, leads to error and confusion in constructing the rate, and consequently to a rate constructed on theory rather than facts.

Rate making authorities, and the Federal courts in reviewing their findings, have repeatedly held that costs can not ordinarily be reached accurately enough with reference to any particular portion of the traffic, or to traffic as a whole, to justify rate making on a cost basis alone.

Interstate Commerce Commission v. Chicago, Great Western Ry. Co., 141 Fed. 1003; affirmed *I. C. C. v. G. W. Ry. Co.*, 209 U. S. 108)

Wood v. Vandalia R. Co., 231 U. S. 1;

Banton v. Belt Line Ry. Corp., 268 U. S. 413;

No. P. R. Co. v. North Dakota, 236 U. S. 585;

Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611.

Moreover, the cost of service is not to be taken into consideration at all, unless it can be accurately ascer-

tained, and all costs can be included and apportioned in such a way to make each portion of the traffic bear its fair load. Some of the difficulties connected with such ascertainment in a situation as complicated as that herein, are dealt with in *No. P. R. Co. v. North Dakota,* 236 U. S. 585, where this Court, in concluding, commented on the record before it in language extremely pertinent in this case:

> "It should be said, further, that we find nothing in the record before us, and nothing in the facts which have been set forth with the most careful elaboration by the state court, that can be taken to indicate the existence of any standard whatever by reference to which the rate in question may be considered to be reasonable."

The test of the reasonableness of a rate is the value, rather than the cost, of the service for which the rate is charged; and the Secretary made no effort whatever to determine or to find the value of the services rendered by appellants. Conceding that actual cost of service, if fairly ascertained, might be regarded as a minimum below which rates should not go, there was no effort to determine the maximum beyond which they should not be allowed to go, whether defined as "what the traffic will bear," "the level at which the flow of patronage will stop," or otherwise; much less to find any mean between such minimum and maximum, which would represent the intrinsic value of the service to the patron.

The foregoing by no means covers all of the flaws in the defendants' application of the cost of service theory, even if that theory were inherently sound. For

example, it cannot be denied that the live stock commission business is carried on under conditions of joint cost, as far as the various items handled are concerned; the only cost which the Secretary made any effort to determine as a direct cost being that of selling; and even in that case the evidence shows without dispute that the listing of a salesman as a cattle or hog salesman means nothing, and that he may not only sell all the dozen different kinds of shipments within the particular species, but may also be expected to act on occasion as yard man, office man or in some other capacity. And throughout Auditor Shortell's testimony, and expressly in the order, it is stated that other costs cannot be allocated except upon a purely arbitrary basis. Yet nowhere does the Secretary attempt a separation as between direct and joint costs. Neither is there any attempt to ascertain constant and variable costs as these terms are generally understood in rate-making; or "actual" as opposed to "additional" cost as a basis for a conclusion as to how much more business petitioners could handle without increasing total costs. Nor is there anywhere any valid attempt to determine the "unused capacity" of the business either as to individual petitioners or as a whole, the only effort in this direction being the fantastic speculation of one witness that a salesman ought to sell 2,000 to 2,500 cars of livestock a year if he had them to sell, later used by the Secretary as a basis for the construction of that figment of the imagination, the "salesman of ordinary ability" upon whose hypothetical efforts selling costs are attempted to be determined.

2. Erroneous and Unconstitutional Methods and Deductions Are Used by the Secretary in Arriving at Items of Basic Cost.

Although the Secretary's rates are claimed to be based on cost of service, plus a reasonable profit, and a detailed cost account it attempted to be set up in paragraph 20 or the order, (R. 35-6) detailed findings are made with respect to but two items: (1) selling and (2) advertising and business-getting. As already noted, the Secretary's aim was to arrive, not at the actual cost of salesmanship, but at the "reasonable expense" to be allowed therefor.

By settled principles, actual costs must be accepted as part of the rate base, insofar as the cost of service is a legitimate part of that base, unless there is affirmative evidence in the record indicating that actual costs are unreasonable or that the managers of the business regulated have abused their discretion in incurring and paying the actual costs. This principle applies to the Secretary's disregard of the actual cost of salesmanship in favor of a purely hypothetical "reasonable expense" just as forcibly as it does to actual cost of business getting. At this point we wish only to point out that the "reasonable expense" is arrived at through purely speculative, hypothetical and fantastic means, having no basis of real fact whatever in the record, and that it is based upon a classification of the petitioners as among themselves, which is in itself erroneous and unconstitutional.

As a preliminary to ascertaining the "reasonable expense" of salesmanship, the Secretary considers in para-

graphs 14-18 of the order (R. 32-4) the various items of expense and undertakes to revise the figures shown by the commission men's books, not to determine what the business has actually cost them, but what in his judgment it ought to have cost them . As to the average salary of the typical salesmen, there is presumably not a great deal of controversy; there are salesmen receiving less salaries than the $5,000 for cattle, $4,000 for hogs and $5,000 for sheep adapted as a "normal," and many receiving much more; and the record perhaps justifies the conclusion that these are fair salaries for salesmen of ordinary and average ability connected with firms who do an average or better than average amount of business.

But as to the amount of business which each salesman is supposed to do to earn his salary, the Secretary makes the supposition, based on the speculation of a single witness, that a salesman can sell a certain number of cars in a year. That witness was never in the commission business himself; and his supposition was in disregard of the testimony of men actually engaged in the business, whose competency and fairness will not be questioned, that it was impossible to estimate the number of cars per year that a good salesman ought to sell, that number depending entirely on his opportunities, which in turn were impossible to foresee, even from day to day, to say nothing of from year to year. The testimony, heretofore summarized and tabulated, (*ante,* p. 26) shows without dispute that the average cattle salesman sells 488.82 cars, the average hog salesman 592.52 cars, and the average sheep salesman 573.44, as compared with the hypothetical 1,000,

1,500 and 1,000. We are quite willing to submit to any fair revision of these figures, so as, for example, to eliminate the smaller firms whose salesmen presumably do not have a full opportunity to exercise their talents; but no matter what prestidigitation of the actual figures may be attempted, the record will still be found utterly lacking in evidence of the existence of the model salesman upon whom the Secretary stakes his analysis of selling costs.

The isolated instances (*ante*, p. 26) where average car per year figures approach those adopted by the Secretary as "normal," far from aiding the Secretary's conclusions, more clearly show their complete unfairness. For, certainly, "normal selling costs" if not based upon mathematical averages in the ordinary sense, must at least be based upon what is normal in the sense of usual, customary and to be expected of the salesman under the opportunity which he may actually expect to have, and not upon what never existed outside of witness Mollin's imagination. And while, of course, the shipper should not be compelled to pay a rate based on the selling performance of the salesman who never has an opportunity to sell, appellants, if they must submit to regulation of their rates, cannot constitutionally be compelled to submit to a rate based upon a maximum opportunity which never existed, unless the regulating authority is also prepared to bring that opportunity to pass, by compelling Mollin and every other shipper to send his live stock to the Omaha market, and when it gets there, to put it in the hands of the regulated agencies. If there were no way of ascertaining selling capacity except by a speculative opinion such as Mr. Mollin's,

an inquiry as to what the model salesman could do in a year might be relevant; but as the figures already tabulated conclusively show, the actual facts, from which can be deduced a fair estimate of what the normal salesman of average ability with fair opportunity can do, are available.

It will, of course, be argued that the testimony of Reed (R. 791) offered in evidence by the Government, shows that in the case of John Clay & Co., the salesmanship cost of each car would be only $2.00 because they expect a $6,000 a year salesman to sell 3,000 cars. A comparison of certain figures in the audit of this firm, however, produces a striking result. Exhibit 103 (R. 798) shows that they handled 6,400.73 cars in 1925. They paid $23,700 for employee salesmen and $8,900 for employee buyers (being a branch they have no owner salesmen), (R. 798) or $32,600 buying and selling costs, a fraction more than $5.00 per car over all species. Their gross commissions for 1925 under the Secretary's order would have been $102,326.25 (R. 830); excluding the increase in seconds, $101,516.38 (R. 798). Their total cost of conducting the business, adopting the Secretary's salary schedule (Ex. 105, R. 798) was $108,180.59, leaving a loss on the one base of $5,854.74, and on the other of $6,664.21. Their actual expenses and deductions were $103,781.37 (R. 487); additional rent of $3,979.80 brings actual expenses to $107,761.17; leaving a deficit of $5,434.92 on the one basis and $6,244.79 on the other, without taking into account interest on investment, depreciation, or other omitted items. This firm employs all its salesmen and buyers and presumably gets the best results by bargaining with them, yet it will be obliged

to quit the market (R. 792) if the Secretary's order remains in force, according to the testimony introduced by defendants, which is presumably as binding upon them as Mr. Reed's speculation as to what a $6,000 a year salesman ought to sell is upon petitioners.

All of the above, of course, takes no account of the basic objection to this sort of cost inquiry—that it proceeds on the supposition that petitioners are merchandising their employees' services and obtaining a profit therefrom, ignoring the fact that this so-called "profit" is not a profit at all, but petitioners' primary reward for the personal services they render.

In addition to the inherent vice in this method of getting at costs, the classification of petitioners as between themselves, adopted for the purpose of arriving at it, is fallacious and unconstitutional.

From paragraphs 12-13 of the findings and order (R. 30-2 the process adopted by the Secretary's representatives in getting at some sort of cost figure for rate-making purposes is apparent. This process consisted, not in determining the cost of operation to each individual respondent, and not in taking such individual costs and averaging them for the purpose of getting at an average cost, and not of eliminating abnormals until a normal actual cost was arrived at through averages or otherwise, but in dividing all appellants into five arbitrary classes, based entirely upon the number of car loads of live stock handled by them yearly, striking an average for each of the groups thus obtained and then,

apparently, of combining these group averages for the purpose of getting an average for the industries as a whole, or at least of indicating the maximum and minimum cost values which should be taken into account. What we are concerned with now is the validity for rate-making purposes, of such a classification, based entirely on the quantity of business done, as well as the validity of group averages obtained by treating a particular industry as a member of such group and weighing it with the average for that group rather than determining its unit cost as an individual matter.

The words "due process of law" have the same meaning in the Fifth and Fourteenth Amendments. *Hurtado v. California*, 110 U. S. 516.

One of the conspicuous cases arising under the latter amendment is *Cotting v. Godard*, 183 U. S. 79, where a Kansas statute limited charges of stockyard companies, the act applying only to yards having average daily receipts of not less than 100 head of cattle, 200 head of hogs, or 300 head of sheep. The act made no distinction as to the character of services rendered. It was general in its terms and applied to any corporation doing business of a certain amount. In the particular case before the Court it appeared that by virtue of the great amount of business done by the complainant it could make a reasonable income. It was none the less held that the statute made a positive and direct discrimination between persons engaged in the same class of business, and based it simply upon the quantity of business which each might do. In that connection the Court said:

"Pursuing this thought, we add that the state's reguation of his charge is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day, and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. He has a right to do business. He has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common-law, even in respect to those engaged in a quasi-public service, independent of legislative action. In any action to recover for an excessive charge, prior to all legislative action, who ever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered?"

The Court then quoted from *Parkersburg & O. River Transp. Co. v. Parkersburg*, 107 U. S. 691, 699, and *Canada Southern R. Co. v. International Bridge Co.*, L. R. 8 App. Cas. 723, 731, and continued:

"* * * The queston is always, not, What does he make as the aggregate of his profits? but, What is the value of the services which he renders to the one seeking and receiving such services? Of

course, it may sometimes be, as suggested in the opinion of Lord Chancellor Selborne, that the amount of the aggregate profits may be a factor in considering the question of the reasonableness of the charges, but it is only one factor, and is not that which finally determines the question of reasonableness. Now, the controversy in the circuit court proceeded upon the theory that the aggregate of profits was the pivotal fact. To that the testimony was adduced, upon it the findings of the master were made, and in recognition of that fact the opinion of the court was announced. Obviously, as we think, in all this the lines of inquiry were too narrowly pursued."

Other decisions condemning such classification are:

N. P. Railway Co. v. Department of Public Works, 268 U. S. 39.

U. S. v. Abilene & S. R. Co., 265 U. S. 274.

Interstate Commerce Commission v. Stickney, 215 U. S. 98.

3. The Secretary's Order, and Especially Its Cost Schedule, Insofar as it Disallows Expense Actually Incurred by Appellants, is Unauthorized, Illegal and Void.

The Secretary entered into some discussion, in paragraph 19 of the order, (R. 34) of the cost of advertising and business getting. Perhaps, also, this discussion is in some degree a reflection of the Secretary's belief as expressed in paragraph 22, (R. 37) that petitioners' "monopolistic powers" of fixing charges without the usually attendant economy of expenditure for business getting, "results in fierce competition for business." How the Secretary arrived at this conclusion or where he obtained the information upon which he based it is

difficult to judge; certainly there is not a word of evidence in the record justifying it. On the contrary, witness after witness testified that his particular firm, and firms generally, were running their businesses as efficiently and economically as possible, incurring and paying only expenses necessarily incident to the business; and the whole history of the Live Stock Exchange is a record of efforts to minimize operating costs and eliminate all items not strictly necessary to the efficient conduct of the business. The sole basis of the conclusion that business getting costs are too high is the statements, already digested herein, of some of the grower association representatives, that they thought commission firms were spending too much for some forms of advertising, particularly market papers. Yet witness after witness also testified to innumerable reasons why one firm might be obliged to spend more than another, or why an individual firm might be obliged to spend more during one year than another. All of the reasons stated in the record were legitimate reasons and no effort whatever was made by the Secretary to distinguish, or to show what was the situation and practice of individual firms, much less to bring into the record affirmative evidence that unreasonable or extravagant expenses had been incurred. If the Secretary intended to disregard these expnses as shown by the books it was his duty to have shown affirmatively just what expenses were unreasonable, the universal rule in ratemaking being that in the absence of affirmative evidence of abuse of discretion by the management of a business in the incurring of operating expenses, it is presumed that such expenses are legitimate as incurred and

as shown by the utility's records; and unless the regulating authority affirmatively overcomes such presumption, the same are allowable as part of the rate base. Nor may a regulating authority reduce rates on the assumption that changes in business practices will produce economies, unless it also imposes those changes uniformly upon all industries affected.

In the conspicuous case of *Missouri ex rel Southwestern Bell Tel. Co. v. Public Service Commission*, 262 U. S. 276, this Court said:

> "There is nothing to indicate bad faith. So far as appears, plaintiff in error's board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that while the state may regulate, with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *State Public Utilities Commission ex rel Springfield v Springfield Gas & E. Co.*, 291 Ill. 209, 234 P. U. R. 1920C, 640, 125 N. E. 891:
>
> 'The commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.'
>
> "See *Interstate Commerce Commission v. Chicago G. W. R. Co.*, 209 U. S. 108, 52 L. Ed. 705, 28 Sup. Ct. Rep. 493; *Chicago M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491, 59 L. Ed. 1423, L. R. A. 1916A, 1133, P. U. R. 1915D, 706, 35 Sup. Ct. Rep. 869; *People ex rel Delaware & H. Co. v. Stevens*, 197 N. Y. 1, 90 N. E. 60."

In *Bronx Gas & Elec. Co. v. Public Service Com. et al*, P. U. R. 1923A, 255, the New York Public Service Commission approved the report of a referee who rejected various hypothetical and theoretical estimates presented by experts testifying for the Commission, in the following expressive language:

> "As to the operating expenses, including distribution and other general expenses, I shall take the actual figures from the evidence based upon the plaintiff's books, as I am convinced that they correctly record not only what was actually expended, but what it was reasonable and necessary to expend for manufacturing and distributing the company's product. I therefore, reject the hypothetical and theoretical estimates presented by the defendant's witness, *and would do so even if he had been shown in this case to be qualified by actual experience to theorize upon so practical an art as making and distributing gas.*"

Among the almost innummerable late cases to the same effect are:

Chicago Rys. Co. et al v. Illinois Commerce Commission, 277 Fed. 970;

New York & Richmond Gas Co. v. Prendergast, 10 Fed. (2d) 167;

State Public Utilities Commission v. Springfield Gas & Electric Co., 291 Ill. 209, 125 N. E. 891;

Consolidated Gas Co. v. Newton, 267 Fed. 231, (affirmed 258 U. S. 165);

Columbus Gaslight Co. v. Public Service Commission, 140 N. E. 538;

Re Southern California Telephone Co., P. U. R. 1922C, 97.

The appellees, of course, contend and the trial court held, (R. 171-6), that the effect of the Secretary's setting up of "reasonable expense" at "normals" much less than those obtaining in practice, was not to prescribe what any appellant's expenses should be, much less to interfere with the management of the business of any appellant, but merely to fix a factor for rate making purposes, which could not be disturbed by the court in advance of its actual application. Such an argument was disposed of in *Chicago Rys. Co. v. Illinois Commerce Commission, supra,* as follows:

> "If the Illinois Commerce Commission had the right, under the act of its creation, to order changes in operation of utilities, in this case it is aiming to accomplish its end by drastic and unlawful means. It is one thing to order (1) changes in routing of cars; (2) reduction in lay-over time to employees; (3) remodeling of accident and law department; (4) reduction of wages and labor; (5) deferring maintenance and renewals; (6) in fact, to order any variation of operation making for the public good. It is quite another thing, having in mind all of these benefits to the utilities and to the public, to say to the utilities we admit that it costs you over 6 cents to carry every passenger; we will, however, reduce your fare rate to 5 cents, and invite you to test out our opinion as to what improvements may be made in the internal operation of your own business.
>
> "The basis of the commission's action in this case is quite wrong. As outlined by its chairman, and urged by its counsel, supplemented by the corporation counsel for the City of Chicago, it affords no *locus poenitentiae* for the plaintiff railroads. No opportunity is given them to try out the urged reforms. They are told in advance that the medicine is good and that they must take it, whether they like it or not, irrespective of whether it has any thera-

peutic value. The orderly, rational, and legal method of procedure would have been for the commission to outline these various changes in management and operation, and invite the companies to put their suggestions in force, giving the companies an opportunity to demonstrate the benefits, or even the possibilities, of the order.

"All of the changes suggested by the commission were matters of conjecture and opinion, and it is quite within the range of human thought that some of the changes could not be carried out to advantage, either to the companies or to the people. Why, then, should the Illinois Commerce Commission, discounting impossibility of performance, direct a rate which both it and the City of Chicago admit will not produce operating expenses, to prevail until their views are adopted. Too much commendation cannot be given to any public utilities commission for its interest in public affairs. It will always be forgiven if its enthusiasm leads it to incidental legal excesses. It cannot, however, act arbitrarily to force its views without trial."

The foregoing observations apply to at least three items, set up by the Secretary, arbitrarily, illegally and without basis of fact, at weights less than actual expenditures, and for which the actual cost, as disclosed by the undisputed evidence, must under the foregoing rules be substituted:

(a) *Advertising and Business Getting,* 69c per car omitted (***ante,*** **pp. 28-29).**

(b) *Other Salaries,* 36c per car omitted (ante, **p. 34).**

(c) *Overhead,* 35c per car omitted (***ante,*** **p. 34).**

4. The "Normal Cost" Schedule Omits Basic Cost Items Essential to the Formation of a Valid Rate Base.

We are here concerned with the construction of an accurate cost schedule. Whatever use is made of it after its construction, it is invalid either as a basis of rates or as a means of establishing a minimum below which rates shall not go, unless it includes every item necessarily incident to the business regulated. It must include all items of constant cost. It must include all ascertainable items of variable cost. It must either include a fair estimate of such additional costs as will be imposed by the additional business which a fair rate is supposed to create, or be graduated so as to make the rate capable of being adjusted to that additional business and additional cost when it comes. And it is utterly invalid if it fails to take into account all the reasonable and constant expenditures which the utility must incur.

Nor is this argument met or avoided by saying that only such items as appear in the books will be allowed. The auditor Shortell was careful to make clear that many of petitioners' books were nothing to boast of from an accounting point of view (R. 355) and that he did not hesitate to disregard them where not in accord with his own theories of accounting (R. 326, 338) or to set up such accounting schedules as he deemed necessary whether appellants' books included them or not. And certainly appellees cannot disregard actual costs as applied to salesmanship, business getting, overhead and other salaries, and at the same time insist that the books must govern the omission or addition of items of basic cost ordinarily recognized as part of a rate base.

(a) Depreciation.

While this is a personal service business requiring comparatively little capital, yet some capital is necessary, the Secretary himself having set up the return thereon as part of his cost schedule. The depreciation actually taken was $5,661.94. The additional depreciation not shown in the Government's audits, Exhibits 7-65 or in Exhibit 104, and computed on a basis which is not disputed, was $6,164.92, (Ex. 106, R. 798) or a total of $11,826.86. This is, roughly $.10 per car, which is of course a factor of constant cost. The point here is not only that the additional depreciation was not included, but that depreciation as such was not set up, as it is in every reasonable rate structure, as a separate item of basic cost. That it must be so included in order to make the rate valid is a fundamental proposition in rate-making, and supported by the universal weight of authority.

Knoxville v. Knoxville Water Co., 212 U. S. 1.

Montana W. & S. R. Co. v. Morley, 198 Fed. 991, 1004.

Cumberland Teleph. & Teleg. Co. v. Louisville, 187 Fed. 637, 654.

Metropolitan Trust Co. v. Houston Co., 90 Fed. 683.

Houston Electric Co. v. City of Houston, 265 Fed. 360.

(b) Going Concern Value.

The evidence established beyond dispute the fact that the live stock commission business is one which depends upon experienced, proven skill and established connections, many of the latter of such tangible nature

that they are handed down from father to son. The fact that appellants' stock in trade is principally experience, skill and following, in short their own personalities, but strengthens the inference that even more than the ordinary publicly regulated business they are entitled to fair return upon not only the actual investment but also the value created in the course of the establishment of the business—that is, on that additional value which inheres in a business established and operating as compared with one with the same capital and personnel starting in business for the first time. This element was totally disregarded, not only throughout the inquiry before the examiner, but also in the findings and order. The utmost consideration appellants received was that good will was allowed as part of net worth where it had been set up on the books as the result of an actual transaction, such as a payment on sale of a business, etc.; the general rule followed, however, being to disallow it. But whether shown on the books or not, that element was a part of appellants' investment in the business in every case of a concern established and operating, and it was the duty of the Secretary to ascertain its value and allow a fair return upon it, as part of his cost account. The fact that in the case of a personal service business this going concern value would be extremely difficult of ascertainment could not relieve him of this duty. The item of value was there; the cost schedule was and is fatally defective without it; and no more in connection with this phase of the case than any other is the regulating authority held down to mathematically exact allowances, so long as the allowances actually made are reasonably fair under

the circumstances. And petitioners cannot constitutionally be required to submit to regulation at all, unless fair return upon all such items is assured them, however difficult of ascertainment such return may be.

The authorities are likewise unanimous in support of the proposition that petitioners were entitled to this allowance and that the rates ordered by the Secretary are fatally defective without it.

McArdle v. Indianapolis Water Co., 272 U. S. 400.

Des Moines Gas Co. v. Des Moines, 238 U. S. 153.

Denver v. Denver Union Water Co., 246 U. S. 178, 191, 192.

Omaha v. Omaha Water Co., 218 U. S. 180, 202, 203.

Cleveland, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439.

Bluefield Water Works v. Public Service Commission, 262 U. S. 679.

Southwestern Bell Telephone Co. v. City of Ft. Smith, 294 Fed. 102, (affirmed 270 U. S. 627).

Pacific Telephone Co. v. Whitcomb, 12 Fed. (2d) 279.

It will be seen from the foregoing cases that how much ought to be allowed for going concern value depends entirely on the circumstances, the character of the business, etc. It might have been ascertained with fair accuracy by detailed inquiry on the part of the Secretary as to just how long each business had been established, the experience, skill and established connec-

tion of each member of each petitioner firm, and the amount which the established business in the hands of each established firm represented as compared with a firm beginning operations. This was not done, and the Secretary only is responsible for its omission. There are, however, in Exhibits 7-65, some figures on good will that may be of some assistance. We do not, of course, mean that good will as such is allowable as part of the rate base, much less that it is synonymous with going concern value. Yet these figures, as witness Shortell testified, represent amounts actually paid for the established businesses of the concerns in the course of sales and other transactions and may therefore shed some light, however dim, upon the question. The audits of only seven firms include any good will, allowed by Shortell as part of the net worth which makes up the total for the market of $771,571.00 invested capital allowed. The numbers of those firms, the amount of good will and the net worth are as follows:

Firm Number	Good Will	Net Worth
2	$ 7,200.00	$ 2,936.93
9	1,971.40	38,234.87
16	2,500.00	4,500.00
21	1,000.00	8,008.30
45	4,272.57	5,259.92
47	15,000.00	20,853.88
49	500.00	16,929.42
	$36,943.97	$96,223.32

Of these seven firms, the net worth after deducting the good will is $59,279.35. The good will, therefore, is .623 of the remaining capital. If we deduct from the

total capital of $771,571.00, the $96,223.32 representing the total net worth of these seven firms, we have left $675,347.68, being the "remaining capital," including no good will, of the other firms. On the proportions indicated by the average for these seven firms, there would be additional good will of $420,741.60 for the other firms. Just how representative the seven firms are in the relationship of good will to net worth other than good will, we are, of course, not prepared to say, nor is it appellants' duty to do so. But these figures were certainly sufficient to have furnished the Secretary with a point of departure for the inquiry as to going concern value of which it was his unqualified legal duty to make.

(c) Bad Debts.

In spite of the undisputed testimony that certain losses on account of bad debts are inevitable no matter how carefully a commission business is handled, (*ante*, p. 30), the order makes no basic allowance therefor, on the basis solely that the commission business being a cash business, no credits are necessary and therefore no bad accounts are allowable. That this was not only in disregard of the undisputed testimony, but also wholly arbitrary and unjust, we think requires no elucidation. And where it is shown, as it was in this case, that these are necessary and constant losses, it is the duty of the regulating authority to ascertain them, determine what a fair allowance for them is and set it up as part of the rate base. We do not presume to say on what basis it should be done in this case; but certainly deductions taken by each firm on account of bad accounts and other necessary deductions over a sufficient

period of years to be sure of representative figures were readily available; the regulating authority was charged with an affirmative duty to ascertain what the normal cost on this account is; and no more in this particular than any other are the appellants obliged to submit to regulation unless all items of normal cost are not only allowed but set up as normals in the cost schedule, where the cost of service theory is used in constructing the rate. There are, of course, various ways of getting at the normal allowance for bad accounts and other similar deductions. For example, in *Re Northern States Power Co.* P. U. R. 1924A, (N. D.) 325, and *Re Bay City Water Co.*, P. U. R. 1924E, (Ore.) 653, 1 per cent of gross income was allowed. In *Re Consumers Co.*, P. U. R. 1923A, (Idaho) 418, the average over a period of years was suggested as a practical method; while in *Re Pawnee Telephone Co.*, P. U. R. 1923C, (Neb.) 100, it was stated to be the duty of the rate-making authority to allow such deductions to the extent to which current accounts under good management turned out to be bad.

(d) Supervision.

There is involved in the activities of the "normal" commission firm an element totally disregarded by the Secretary's order, yet which is one of the outstanding elements of underlying cost. That is the cost, especially in view of the recent growth of detail in the live stock commission business, of supervising the efforts of salesmen, yard men, office force and others. That cost is entirely separate and distinct from selling, from yard salaries, from overhead as allowed by the Secretary, and from any of the other items discussed in the Secretary's

order. While it is an element of joint cost it is, none the less, definitely ascertainable. Many firms have office managers who do this work, and of course the branch organizations get it done in no other way than by employing a manager and fixing his salary by bargaining. These figures are tabulated both for the 11 firms having managers and for the 4 branch houses on page 32 *ante*, and show a per car cost of supervision or management for the 11 firms of $1.34 per car for cattle; $1.54 for hogs; $1.08 for sheep, and $1.38 for all species; and for the branches of $.94, $1.09, $.78 and $.96 respectively. This situation is no whit different in the case of the firms which do not have managers devoting their time exclusively to this work, with their salaries as such set up separately on the books. The cost is none the less there, and the testimony of witness Wood (R. 776) and others shows that where a member of the firm who is also a salesman looks after the duties of management, he does so in addition to the duties of salesman, in the time not devoted to salesmanship, and frequently at the cost of having to do two days work every day in the year.

(e) Invested Capital Omitted.

In this respect as in others the auditor and the Secretary followed the plan of accepting the firms' books where items which must be included in any lawful rate schedule were not set up, but disregarding them where in conflict with the Secretary's theory. Exhibit 107 (R. 798) shows without dispute that in addition to the capital, including memberships, set up in Exhibits 7-65 and allowed in the order, there are used in the business

by the members of petitioner firms, memberships having a total and undisputed value of $312,000.

5. The Order Seeks in Part to Justify General Rate Reduction by Authorizing a Special Increase, Which, Under the Undisputed Evidence, Can Not and Will Not Be Realized.

The Secretary's order, in paragraph 25 (R. 38) sharply critizes a provision in Tariff No. 1, which also, of course, appears in Tariff No. 2, for a half commission to regular yard traders and exchange members. The paragraph remarks that this lower rate is granted notwithstanding evidence that "planted" live stock is harder to sell than "fresh stuff." In paragraph 27 (R. 38 ff.) a rate is fixed which contains no such exception or special provision. The result therefore is, while not affirmatively requiring appellants to charge the same rate for seconds as for original sales, to authorize them to do so. And, of course, the inference is that they ought to, as a means of recouping some of the reductions otherwise incident to the Secretary's tariff.

The evidence shows, without any contradiction whatever, first, that the traders and speculators are a benefit to the market and its patrons, by providing a means of disposing of odd lots of live stock, by enabling each day's business to be taken care of without going over to congest the next day's, and by increasing the market's buying power; second, that the charging of a full rate would destroy or at least seriously cripple their business in that the difference in commission charged is ordinarily more than their net profit; and third, that the decrease in volume following a rate increase would more than

offset any gain from the increased rate. The witnesses all testified that they would favor the reduced rate, notwithstanding the authority to charge a full rate, and notwithstanding the other losses which the Secretary's tariff will impose upon them. Under the circumstances, therefore, it is apparent that this authorization will not increase petitioners' returns, and that in determining what the practical effect of the Secretary's tariff will be, it is necessary to disregard it. If the traders could manage to operate under the reduction, the net result would be a loss to shippers, in the form of an equivalent decrease in price.

It remains only to note that in criticizing this special rate, the Secretary ignores a fundamental principle in rate making, which is that an industry is justified in handling additional business, even at less than out of pocket unit cost, where to do so will not increase its ordinary or "actual" cost. This is particularly true of the type of business which, but for some such possibility, could not exist at all.

6. The Order Selects the Omaha Market, Notwithstanding Materially Higher Rates Under Substantially Similar Conditions, and in Disregard of the Undisputed Possibility of General Rate Fixation.

That the several terminal live stock markets are interdependent and that at least the entire west is part of the same shipping territory, does not admit of contradiction. St. Paul, Portland, Los Angeles, Denver, Wichita, Oklahoma City, Sioux City, Omaha, St. Joseph, Kansas City, St. Louis, Chicago and Fort Worth are all competitive, the one with each of the others. Shippers

anywhere west of the Mississippi River, ship to any one of three or four markets and find prices at an approximate level, allowing for the difference in freight rates. Most of the Omaha market's immediate competitors have a commission rate higher than Omaha's. If the Secretary deemed it his duty under the Act to adjust such rates, therefore, he should not have selected any one market on which to test their reasonableness. On the contrary, the whole commission fabric in competitive territory should have been discussed at one time. The Secretary should have proceeded as does the Interstate Commerce Commission when it desires to dissect any rate situation, by instituting a proceeding covering rates over a whole territory or group of territories affected, suggesting the specific changes in the rates deemed necessary, or proposing a new schedule of rates; and bringing all parties in for a hearing covering the entire territory, and a rate order which would not set up discriminations or attack piece-meal any one market rate fabric.

It is a fundamental principle of rate-making that industries operating under substantially similar conditions are entitled to charge the same rates and that an order of a regulating authority having jurisdiction of all is invalid if, without evidence of substantial dissimilarity, it fixes for one business or group a rate substantially less than that permitted others.

Hooker v. I. C. C., 188 Fed. 242.

I. C. C. v. Tennessee, etc. R. Co., 85 Fed. 107.

I. C. C. v. Cincinnati etc. R. Co., 56 Fed. 925.

So. R. Co. v. State R. Comm., 42 Ind. A. 90, 83 N. E. 721.

Turner Creamery Co. v. R. Co., 36 S. D. 310, 154 N. W. 819.

C. & N. W. Ry. Co. v. R. Com'n. 156 Wis. 47, 145 N. W. 216, 974.

The Secretary has himself recognized this principle when in *Re St. Paul Union Stock Yards Co.*, U. S. Dept. Agriculture, Packers & Stock Yards Administration, Docket No. 116, he dismissed a proceeding for the fixation of yard charges at that point on the ground that it was impossible to test the rates at St. Paul without a detailed investigation of charges elsewhere and of the stockyards situation generally.

7. The Order Is Based upon the Erroneous, Unconstitutional and Palpably Unjust Theory of a Rate Level, which will Eliminate Many of Appellants, Leaving the Remainder to Enjoy the Speculative Benefits Resulting Therefrom.

We think no time need be taken with discussion of the record in this connection. However appellees may seek to avoid its effect, and however earnestly they may invoke the law of the survival of the fittest as a prop to the right of regulation, the fact is apparent that the whole theory, upon which those who prepared the findings and rate schedule, and those at whose behest the schedule of lower rates was adopted, were proceeding, is that the live stock commission business is "overmanned;" and that, therefore, it is the function of the Secretary as the public official responsible to and mediating between all parties, to take the place of the law of supply and demand, the law

of the survival of the fittest, and all other economic laws, and impose a rate which would, by eliminating the "weaker" firms, confer untold benefits upon the survivors. That such was the deliberate intention upon which the Secretary's rate was built, cannot successfully be denied, in view of the record in this case. That such will be its effect is obvious, in view of the undisputed testimony.

In spite of the trial court's defense of it (R. 175) this is an erroneous and unconstitutional theory of rate-making, even if it were not palapably unfair and unjust. There are three observations concerning it which effectively dispose of any specious apology which may be made for it.

In the first place, the rate-making authority is concerned not with the question whether any business has or has not the right to survive, but with the intrinsic reasonableness of the rate as such, which he must build on the theory that all industries have a right to survive so long as they are managed with reasonable efficiency; and he may not, in the guise of a rate-maker, inject himself into the question of reasonably efficient management. This does not, by any means, imply that a rate is unreasonable merely because everybody can not survive under it; it does mean that a rate based on the intention of eliminating established concerns, without clear and conclusive proof of inefficient management or unreasonable expenditure, is inherently unsound, and the theory upon which it is based inherently fallacious.

In the second place, the benefits of such elimination of the "weak" for the benefit of the "strong" are purely

speculative, and would not accrue, even temporarily. The real concern of everyone connected with a regulated industry, and particularly its patrons, is the efficiency of the service rendered, provided the patron does not have to pay for that service more than its value under all the circumstances. To reduce rates for the purpose of eliminating a number of competitors does not by any means result in eliminating only those rendering their patrons the least efficient service. This will be apparent on a moment's reflection, even without the affirmative evidence in this record that under the Secretary's rate many of the oldest and best firms at Omaha will go down. Financial efficiency and efficiency of service are synonymous only when other things are equal. If everybody is insured a fair and reasonable rate, and fair practices are insured by the vigilance of the Exchange and the Government, then the patronage will tend to go to the firms rendering efficient service to their customers, and the ordinary operation of that factor will, in due course, eliminate those who for any reason are not able to render that type of service, whatever their financial acumen may be. But if a rate is imposed on the theory of eliminating enough industries to make the others prosper—whether the 20% or more estimated by Stryker, or the 50% which witnesses like Stewart, Tomlinson and Burke would like to see eliminated—the market at once becomes a scramble for business without regard to efficiency; the fact that some of the firms rendering their customers the best service must, none the less, collapse, destroys the whole basis upon which the market and the system of market practices are built up; the market becomes disorganized; the prime factor in maintaining it—

confidence of patrons in their brokers—is shattered, and patrons either go to some other market, or if the same is happening on all the live stock markets in the country, find some other means of marketing their live stock, probably to their own great disadvantage. And the attempt to maintain live stock commission rates at the level of the Secretary's order will inevitably have just that effect upon the Omaha and every other terminal market at which it is attempted.

But, thirdly, it is argued, in response to the suggestion that the theory of elimination might well be applied to reduce the number of men engaged in producing live stock, such action is not justified in the case of the producers because they are not organized for the purpose of maintaining their prices, while the petitioners are. There might be something in this argument if when rates are reduced and the process of elimination begins, there were any means whereby the shipper could be compelled to continue to patronize the Omaha market, so as to insure to the survivors the benefits which the Secretary wishes to confer upon them. There might be something in it if the commission men really had any such monopoly as the Secretary's order fallaciously suggests that they have. As a matter of fact, there is no analogy whatever between appellants' position, and that of utilities commonly regulated on the theory of "natural monopoly," such as railroads singly serving a given territory, or gas or electric companies singly serving a given municipality. In that case the patron has no recourse but to patronize the utility. In appellants' case the patron has many other means of getting his live stock sold. He may sell direct,—a practice which is growing, to the serious dam-

age of the industry. He may sell through an independent. He may sell through a cooperative. When a single cooperative handles from 6 5/10% to 10% of the entire business on the market, it would seem that the theory of "natural monopoly" reduces to absurdity, no matter how much it may be bolstered up by reference to the desirability of the service and the practical necessity of obtaining it only from petitioners. Finally, he may ship to another market, and whether defendants are right or not in defining the association through which appellants have initiated their own rates as monopolistic, it is certainly absurd to suggest that there is any such community of interest between them and their competitors at other markets, especially with appellants' rates much lower than they are at the two markets to which they are, in spite of their lower rates, steadily losing business.

The fact that under Tariff No. 2, since these proceedings began, two firms—Nos. 50 and 55—have gone out of business, while three—Nos. 26, 32 and 41—have consolidated with other appellants indicates that the object sought may safely be left, as it should be, to natural economic evolution.

And it is fundamental that rates cannot be fixed on the theory that the result will be to force any utility affected thereby out of business. Each utility is individually entitled to have its rates based on a fair return upon its capital invested and services rendered as a *going concern.*

Denver v. Denver Union Water Co., 246 U. S. 178;

Doherty & Co. v. Toledo R. & L. Co., 254 Fed. 597.

8. The Order is Based upon Irrelevant Considerations of the Economic Situation of Appellants' Patrons.

This, of course, has reference to the hundreds of pages of testimony from the presidents and secretaries of various western growers' associations (whose membership, according to the undisputed evidence, includes approximately 2% even of the western growers) as to the general situation of the live stock industry and the producers of live stock and to paragraphs 21 and 22 of the order which, without any basis whatever in the record, label appellants' hypothetical profits as excessive *per se*, apparently because the percentage of their profit to cost of handling and care is deemed greater than the producers' percentage of profit to cost of production.

All of these witnesses were testifying with reference to the proposed increase in Tariff No. 2, not to the rate structure generally. Their claim was in effect that live stock producers generally had suffered severe losses during the five years beginning in 1920, and that the producers represented by the witnesses were discouraged or irritated by the suggestion of increases in commission charges. No witness presumed to state that the commission rate is a controlling factor in the production and sale of live stock, much less that it had anything whatever to do with the losses incurred by the producers during the period in question. No witness attempted to weigh live stock commission charges as a factor in the producers' situation, against the numerous other factors

which affect it. Every witness admitted that, as far as his individual business was concerned, it was not important. The testimony that the commission rate is one of the least important, almost a negligible, factor in the producers' problem, therefore stands uncontradicted.

The rate initiated by appellants was about 9/10 of 1 per cent of the value of the product sold and the difference between it and that imposed by the Secretary—that is, the reduction imposed by the Secretary's order—somewhat less than 1/10 of 1%. It cannot be disputed that the reduction imposed will, none the less, put a large percentage of appellants out of business. It is conceded that the service performed by the petitioners is a valuable service without which the live stock business could not have reached its present state of security, without which it cannot hope to continue the prosperity restored without governmental aid since these proceedings began, without which it cannot continue to exist on the present basis at all. The question then is, can a rate reduction which will ruin many of the industries regulated, be justified because of the economic situation of their patrons, the entire rate being a minor, even a negligible factor in that situation?

We respectfully submit that this question can have but one answer. We do not for a moment mean to suggest that the economic situation of users is totally irrelevant to the fixation of reasonable rates. But it is relevant for one purpose only, namely, to test the value of the service, or more accurately speaking, to determine what rate the traffic will bear, using that term in the correct sense and without its usual hostility-pro-

voking connotations. That is, it is relevant for the purpose of determining the point at which rates, at their maximum, will stop the movement of patronage to the utliity. Only one witness attempted to fix that point: Witness Tagg testified that the movement of live stock into a market would not be affected by rates unless they were at least 1½ per cent of the value of the product—more than 50 per cent more than petitioners' present average rates. The economic situation of the user is never considered for the purpose of justifying a rate which will not repay the utility's costs; and it cannot be used as an excuse for imposing a rate which is less than the service is actually worth. As the Montana Commission remarked in *Butte v. Electric Ry. Co.*, P. U. R. 1921 C, 857, the rule as to the value of the service must not be distorted to destroy the rule of fair return; while the service may be worth nothing to the man who cannot pay, the utility may not be compelled to meet his necessities. And if corroboration be necessary, it is found in the fact that, notwithstanding the rate level at Chicago and Sioux City is higher than that now existing at Omaha, there has been during the last year or two a marked diversion of live stock business away from Omaha and to those markets.

If we but consider what really controls the situation, the truth of the proposition that the live stock commission rate is a negligible factor is apparent.

Of these factors probably the most important is the concentrated buying power of the packers who, witness after witness said, get all the live stock anyway—rail-

roads, yard companies, commission men, yard traders, and feeders, being only conduits whereby the live stock passes from the producer to the packer, who is the real intermediary between the producer and the ultimate consumer. On this record, and as a matter of which the Court can take judicial notice, it is fair to say that the principal aid to the producer, not only in getting a fair price for his product from this intermediary, but also in insuring fair treatment generally, have been the live stock commission merchants—the only group, since the great terminal markets were established, which has presented a united front in opposing buying skill with selling skill, in bettering market conditions, in establishing fair practices, and in fighting the producer's battle generally. As opposed to the concentrated buying power of the packer, the live stock commission merchant and his exchanges have been the only substitute for the organized producing and selling power which the producer ought to have but, unfortunately, has not. And when in the face of the situation as it actually exists, the governmental agency constituted for the protection of all parties, in lieu of attacking the real problem—concentrated buying vs. diffused selling power, plus a general economic situation which in 1925 was, but is no longer, adverse—regulates out of existence the agency whose charges are not only a negligible factor in the producer's economic situation, but whose services are the principal factor in such market prosperity and protection as he has, we respectfully submit that it gets the cart where the horse ought to be. If the commission business must ultimately be driven from the back seat, it should be only after the really controlling elements in the situation are dealt with.

We might enumerate a dozen other factors which were of more consequence, in analyzing the producers' situation and aiding his return to prosperity, than the rates charged by appellants. Freight rates themselves were, of course, a tremendous factor. Increased labor costs contemporaneous with decreased selling prices; inflated land values; borrowing cheap and repaying dear; shifting public tastes; increased taxes; direct selling; market competition; overproduction; general financial deflation and depression; and the whole problem of financing an industry through an era of falling prices: All these elements entered into and complicated the situation; and the Secretary's order, ostensibly taking some of them into account, was palpably entered in disregard of their controlling weight.

The authorities have condemned this method of approach to rate problems and this attitude of a rate making authority too often even for citation.

The power of the rate making body is to judge the intrinsic reasonableness of proposed rates and not their effect on the industry affected generally. While of course the rate making body has a right to consider the relation of the business, whose rates it is regulating, to the other interests which that business serves, and consider the industrial structure as a whole, it may do so only for the purpose of determining whether or not the rate fixed will be sufficiently remunerative to escape the condemnation of the Fifth and Fourteenth Amendments. That is, the rate making body may well consider the possible effect of a change in rates upon the prosperity of other industries which will be affected directly or in-

directly thereby, for the purpose of determining as certainly as may be, whether an increase in rates will diminish patronage to the point where the business will become unremunerative, or a decrease will increase the patronage to the extent necessary to make up the immediate loss in revenue, but it may not use the prosperity or want of prosperity of patrons as a reason for raising or lowering rates, or make the rate fixed depend upon the prosperity or want of prosperity of such patrons, much less lower the rate for the purpose of transferring to these patrons some part of the revenue which would otherwise be paid over to the business regulated. For such purposes, evidence of the financial condition of other industries related to the one regulated, or of the effect upon that condition of a change in rates, is wholly incompetent; and a rate fixed for such a purpose is wholly void.

Southern P. Co. v. Interstate Commerce Commission, 219 U. S. 433

Louisville & N. R. R. v. Interstate Commerce Commission, 195 Fed. 541, (rev. other grounds, 227 U. S. 88).

Considerations of public interest can not be invoked to compel a utility to maintain a non-compensatory rate.

Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585;

Hocking Valley R. Co. v. Public Utilities, 110 N. E. (Ohio) 952;

Reagan v. Trust Company, 154 U. S. 362.

Charges can not be regulated in proportion to the prosperity attending the industry, whose products the regulated industries handle.

Tift v. Southern Ry. Co., 138 Fed. 753, (affirmed 206 U. S. 428).

A utility can not be compelled to maintain a rate less than reasonable, on the ground of the public good.

Northern P. R. Co. v. North Dakota, 236 U. S. 585.

Nor can purely speculative benefits, which may follow a change in rates, justify a change in other rates promulgated by the utility on its own initiative.

North Hennepin Producers' Ass'n. v. C. St. P. M. & O. Ry. Co., 200 N. W. (Minn.) 808;

So. Pac. Co. v. I. C. C., 219 U. S. 433;

North Coast Power Co. v. Kuykendall, 201 Pac. (Wash.) 780;

Oklahoma-Colorado Potato Rates, 28 I. C. C. 298;

Allegheny Ore & Iron Co. v. C. & O. Ry. Co., 53 I. C. C. 415;

Board of Rd. Commsrs. of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C. 407;

Corn Belt Meat Producers Assn. v. C. B. & Q. Ry. Co., 14 I. C. C. 376;

Cenrtal Yellow Pine Assn. v. Illinois C. R. Co., 10 I. C. C. 505;

Revenues in Western Districts, 113 I. C. C. 3;

Wool Rates Investigation, 91 I. C. C. 235;

Kansas Public Utilities Com. v. A. T. & S. F. Ry. Co., 83 I. C. C. 105;

Rates and Charges on Grain and Grain Products, 91 I. C. C. 105.

In the case last cited, the Commission summarized the relative importance of a reduction in rates as compared with maintenance of adequate service, in language applying directly to the order here involved:

> *"That the benefit which would accrue to the average farmer in case of a reduction in rates is small compared with the aggregate disastrous effect on certain of respondents' revenues and on their credit, and there is serious doubt whether farmers would not in many instances lose from impaired railroad service more than they could possibly gain from a reduction in rates, even if the farmers would get the entire benefit of any reduction made."*

9. The Rates and Charges Prescribed in the Order Are Non-compensatory, Confiscatory, Unreasonable, Unjust and Unconstitutional when Tested by the General Situation Disclosed by the Record.

The trial court in its opinion correctly stated (R. 170) that the Secretary in fixing appellants' rates, like appellants themselves in initiating them, was charged with the duty of finding a rate high enough to compensate the efficient, low enough to keep out incompetents, within the margin of the value of the service to patrons, and on the whole just and reasonable. It is clear (1) that the Secretary made no effort to ascertain the value of the service; (2) that in adopting the cost of service basis, he used hypothetical and theoretical normals in disregard of actual costs; (3) that he omitted from his normal

cost schedule essential and basic cost items; (4) that the increase authorized as a partial palliative for general reduction will not be realized; (5) that he penalized appellants by selecting them on the sole pretext that he must begin somewhere; (6) that the intention and effect of the order was and will be to eliminate existing utilities; and (7) that in attempting to benefit the live stock industry, under a statute enacted for its benefit, he attacked a minor problem, leaving major economic factors untouched.

That the Secretary's order possesses these flaws has not yet been disputed, either by appellees or by the trial court. The attempt to meet them both by appellees and in the holding of the trial court (R. 171-6), when analyzed, reduces to two propositions:

1. That the Secretary was justified in adopting "reasonable costs," because there is such variation in costs of appellants as to make both averages and examples valueless.

2. That conceding the errors in the Secretary's cost schedule, both as to what is included and what is omitted, there is none the less a sufficient margin between the return to appellants under his rate and actual expenditures by them, to render the rates non-confiscatory.

As to the first of these arguments, the presumption that the Secretary's findings of fact are correct, as far as they go, and the limitations on such presumption, have already been discussed and are well understood. What is overlooked is that there is a similar, and much stronger, presumption as to the legitimacy and reasonableness of the expenditures actually made by the regu-

lated industries. It is quite true that averages in themselves have little meaning, but it does not follow that the are *per se* meaningless, as suggested in the lower court's opinion. If the examples used are typical, and if the number of examples available is sufficient, they have, at least, as great significance as a "reasonable cost" based on the performance of a commission firm, not only atypical but completely imaginary. The announced standard of "reasonable cost" was that of firms exhibiting "ordinary efficient management of their business." The announced standard of selling performance was that of salesmen employed by firms whose volume of business gave them the "proper opportunity to display their ability." All of the first class of firms must be included somewhere in the list of 56 appellants. Most, if not all, of the second class must be included among those doing an average or better volume of business. In any case, whether the firms be considered separately or in the aggregate, their actual performance and actual expenditures are presumptively correct for rate making purposes; and the regulatory authority cannot legally find such presumption overcome merely on ascertaining that their costs show variation. This is especially true when, as the record herein shows, the so-called variations are in fact normal incidents of the business regulated. A drouth in a given section, curtailing the business of a firm drawing the patronage therefrom and compelling it to advertise elsewhere in order to maintain its volume; producers going out of business, or changing from one species of live stock to another; growth in volume of driven-in and trucked-in shipments; shifts of patronage from market to market, and shifts in the volume of a given species at the same market; these are all normal

incidents of the live stock commission business. If they could have been reduced to constant factors it was the Secretary's duty to have done so; but if they could not, the problem thereby produced can not be disposed of by finding that the variation is so wide as to make cost accounting, on the basis of actual costs, too difficult. The difficulties of regulation are an excuse, neither for confiscation nor for unconstitutional methods.

If then we were to adopt the Secretary's cost of service theory, and attempt the construction of a rate thereon, upon the basis of actual facts, with the adoption of reasonable weights for unit costs of several items omitted, using the per car salesmanship cost of the "average or better" firms tabulated at **page 23** ***ante,,*** and correcting the other items, as indicated at **pages 28-34 and 74-82** ***ante,*** we should reach a revised cost schedule, as follows:

	C	H	S
Yardmen's salaries	1.75	1.50	1.50
Other salaries	2.35	1.95	2.15
Advertising and entertainment	2.70	2.20	2.95
Overhead, including bad debts	2.10	1.85	2.10
Exchange dues	.25	.25	.25
Total	9.15	7.75	8.95

	C	H	S
Salesmanship	6.62	4.75	6.23
Interest including additional capital and going concern value	1.00	1.00	1.00
Depreciation	.10	.10	.10
Supervision not included above	.59	.74	.43
Total	17.46	14.34	16.71

In this account should be substituted whatever a really scientific inquiry would determine the going concern value of petitioners' established business to be.

This per car cost extended for each species, totaled and then divided by the total business of the yards, gives a cost basis for the market as a whole of 16.43 per car. Obviously, if salesmanship were set up at the actual average for the "2,000 or more" firms as computed in the tabulation at page 23 *ante,* there would have to be added $.98 for cattle, $.66 for sheep, and $.42 for hogs, bringing the actual selling cost to $18.44 for cattle, $15.00 for hogs and $17.13 for sheep, or a general cost basis for the entire market of $17.10 per car; and an actual average for appellants as a whole would be still higher. A cursory reference to Exhibit 111 (R. 798) is all that is needed to show that petitioners' actual out-of pocket expenditures per car are moderate as compared with the reasonable cost which would have to be set up on any fair application of the cost of service theory to the construction of a rate base. Nor is it necessary to quibble over details or to spend much time in arguing whether such allowances as the one made by the Secretary for advertising and entertainment are "reasonable." Appellants could submit to substantial reduction of any of these items and the cost basis, on a valid application of the Secretary's own theory, would still be in excess of the actual expenditures as shown by the books, and tabulated in Exhibit 111; even after allowing for any reasonable revision of the Secretary's $5000-$4000-$5000 salary basis.

As to the profit which should be added to this cost base, all that is necessary is to refer to the Secretary's

own finding, paragraph 13 of his order (R. 31) as to average commissions per car, under Tariff No. 1, to reach the conclusion that Tariff No. 2 includes an extremely moderate average margin between cost of service and the charge paid by patrons.

To the second argument, that despite its flaws the Secretary's rate still leaves a sufficient margin over actual expenditures, there are two severally conclusive answers:

In the first place, if the rate was erroneously arrived at it can not be validated on the ground that pursuing a correct method might have reached the same result. In *Louisville & Nashville R. Company v. Greene,* 244 U. S. 522, this Court was dealing with a valuation fixed by a state board of equalization for tax purposes, which the lower court had upheld, saying that though the Board had proceeded erroneously in finding the fair cash value of the appellant's property within the state, its finding would none the less be upheld on the ground that "if they had gone at it in the right way, they would have found such to be the value thereof." Reversing the decision, this Court said:

> "This rough-and-ready reasoning had the effect of depriving plaintiff of the benefit of having controlled mileage taken into consideration in making the apportionment, instead of operated mileage only; and this because of the assumption that the same valuation reached by the Board through an erroneous method possibly might have been reached had they pursued a correct method. We think the court here fell into error. It being shown that the valuation made by the Board was the result of following

a method substantially eroneous because not in accordance with the statute, there is no presumption that a like valuation would have been reached by following a correct method. As the difference is so great—more than $27,000,000—there is a strong presumption to the contrary. If any of the facts necessary to enable the court to determine what result would have been reached by the application of a correct method were absent from the record, the court might have opened the proofs, in its discretion; otherwise it should have proceeded to base its judgment upon such proofs as already were in the record. The result of the method adopted in making up the decree was to deprive plaintiff of the relief it was entitled to, upon the basis of the facts as found, because of a surmise that, upon other facts not shown by the record, a conclusion sustaining the Board's action might have been reached."

This Court held to the same effect, as to the failure of the Interstate Commerce Commission in fixing the value of property devoted to transportation, to take into consideration reproduction costs, in *St. Louis & O'Fallon R. Co. v. United States,* October Term 1928, Nos. 131, 132, 73 L. Ed. Advance Opinions 457, where the Court said:

"Unfortunately, proper heed was denied the timely admonition of the minority: 'The function of this commission is not to act as an arbitrator in economics, but as an agency of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction.'"

* * *

"It was deemed unnecessary by the Court below to determine whether the Commission obeyed the statutory direction touching valuations since the order permitted the O'Fallon to retain an income great enough to negative any suggestion of actual confiscation. With this we can not agree. Whether

> the Commission acted as directed by Congress was the fundamental question presented. If it did not, the action taken, being beyond the authority granted, was invalid. The only power to make any recapture order arose from the statute."

And, of course, where the findings of a regulating body are not sufficient to sustain its rate order, this court will not examine the evidence and make findings to sustain it.

> *I. C. C. vs. C. B. & Q. Ry. Co.*, 186 U. S. 320;
>
> *Louisville & Nashville Ry. Co. v. Behlmer*, 175 U. S. 648;
>
> *Texas and Pacific Ry. Co. v. I. C. C.*, 162 U. S. 197.

Nor can resort be had to the opinion of the lower court to eke out the findings of fact of the rate making authority.

> *Kendrick vs. Commissioner*, 29 Fed. (2d) 559,

and opinions of this Court there reviewed.

The second answer to the contention as to the margin still available to appellants under the Secretary's order is that the actual facts show such margin to be grossly and unjustly insufficient. The following tabulation shows what, after paying actual expenditures, the appellants both individually and in the aggregate will have left out of the income which the Secretary's order will produce:

FOLD OUT IS TOO LARGE TO BE FILMED

FIRM NO.	FIRM NAME	NO. CARS HANDLED 1925	COMMISSIONS UNDER SECRETARY'S ORDER Total	COMMISSIONS UNDER SECRETARY'S ORDER Per Car	EMPLOYEE SALESMEN'S AND BUYERS' SALARIES Total	EMPLOYEE SALESMEN'S AND BUYERS' SALARIES Per Car	YARDMEN'S SALARIES Total	YARDMEN'S SALARIES Per Car	OTH SALA Total
1	Bryson Bros.	2,466.99	$ 37,508.15	15.33	$ 7,800.00	3.19	$ 1,511.00	.62	$ 4,796.
2	Byron Clow	1,233.06	18,781.60	15.23	2,700.00	2.19	1,151.66	.93	2,923.
3	Farris Marcy Co.	1,738.39	26,608.60	15.31	11,257.50	6.48	2,717.50	1.56	1,952.
4	Interstate Live Stock Commissio	4,206.38	64,899.20	15.43	8,535.00	2.03	4,128.75	.98	11,270.
5	Adams Bros. & Ihnen	1,255.79	18,953.55	15.09	2,640.00	2.10	1,605.20	1.28	1,250.
6	Randall & Co.	1,907.72	30,143.85	15.80	2,400.00	1.26	1,356.00	.71	4,305.
7	W. R. Smith & Son	1,917.12	34,885.80	18.18	2,700.00	1.41	2,975.00	1.55	5,964.
8	Wood Brothers	5,251.35	81,597.51	15.54	14,925.00	2.84	8,049.00	1.53	10,350.
9	Bowles Livestock Co.	4,609.66	69,087.80	14.99	13,175.00	2.86	6,275.41	1.36	5,201.
10	Clifton Commission Co.	1,181.80	18,423.55	15.59	6,800.00	5.75	1,600.00	1.35	204.
11	Dworak-Stolinski Co.	779.80	12,171.52	15.61	1,500.00	1.92	404.00	.52	57.
12	Ingwersen & Daugherty	1,126.09	17,045.80	15.14	4,909.33	4.36	26.00	.02	3,305.
13	Lindley Cahow Commission Co.	6,547.17	105,054.99	16.05	27,325.77	4.17	10,676.00	1.63	9,691.
14	John Ralston Commission Co.	2,750.38	40,674.20	14.79	19,496.81	7.09	2,112.50	.77	3,061.
15	Security Livestock Commission	1,105.09	16,412.10	14.85	6,300.00	5.70	1,525.00	1.38	1,602.
16	Winn Brothers	418.67	6,019.00	14.38	.....	.....	1,325.00	3.16	3.
17	Boetel Livestock Commission C	544.52	8,537.05	15.68	.....	.....	.....	.....	1,510.
18	John Clay	6,400.72	102,579.90	16.03	32,600.00	5.09	11,748.27	1.84	19,170.
19	Allen Dudley & Co.	2,138.74	32,486.90	15.19	7,210.00	3.37	2,281.70	1.07	2,395.
20	Greene Madden & Co.	1,450.55	21,725.45	14.98	2,400.00	1.66	3,000.00	2.07	1,537.
21	Lee Livestock Commission Co.	1,131.54	17,189.60	15.19	1,800.00	1.59	1,819.00	1.61	1,899.
22	Omaha Livestock Commission	3,506.39	52,991.99	15.11	12,500.00	3.57	2,250.00	.64	5,050.
23	Rosenbaum Bros. & Co.	2,416.85	38,398.20	15.89	22,463.34	9.29	7,070.75	2.93	6,923.
24	Williams & Son	478.01	9,362.20	19.59	.....	.....	1,529.05	3.20	1,581.
25	Bliss, Wellman & Hopkins	2,534.39	37,227.10	14.69	7,367.50	2.91	4,438.50	1.75	8,114.
27	Donahue Bros., Inc.	2,109.28	34,095.20	16.16	5,562.50	2.64	4,217.50	2.00	4,164.
28	Great Western Commission Co.	5,458.27	84,235.15	15.43	21,871.90	4.01	7,929.91	1.45	21,654.
29	Laverty Bros.	2,134.38	32,324.70	15.14	12,595.00	5.90	1,890.00	.88	2,299.
30	Mutual Livestock Commission Co.	3,952.25	59,639.90	15.09	10,337.50	2.62	6,099.16	1.54	4,247.
31	Chas. O. Robinson & Co.	2,919.07	44,571.70	15.27	24,104.09	8.26	5,972.50	2.05	11,018.
32	Ward Murphy Livestock Commission Co.	747.23	10,431.80	13.96	2,000.00	2.68	979.78	1.31	696.
33	Bliss & Son	1,130.09	17,405.60	15.40	6,400.00	5.66	875.00	.77	2,064.
34	Byers Bros. & Co.	3,486.41	55,979.80	16.06	21,120.00	6.06	5,547.00	1.59	9,358.
35	W. F. Denny & Co.	1,447.51	22,377.15	15.46	6,537.50	4.52	2,270.00	1.57	2,186.
36	Gant Livestock Commission Co.	249.49	4,668.20	18.71	.....	.....	1,725.00	6.92	974.
37	Laird Livestock Commission Co.	910.84	14,217.50	15.61	2,430.00	2.67	2,190.00	2.40	2,173.
38	Melady Bros.	2,803.71	42,108.10	15.02	12,551.15	4.47	5,402.50	1.93	7,385.
39	Roberts Bros. & Rose	6,572.40	101,454.50	15.44	14,310.00	2.18	12,602.70	1.92	13,953.
40	Triangle Livestock Commission Co.	2,234.20	34,753.15	15.56	3,000.00	1.34	4,800.00	2.15	3,241.
41	Lou Bick Livestock Commission Co.	1,260.20	19,762.05	15.68	.....	.....	2,366.00	1.88	2,495.
42	Burke-Rickley Co.	1,548.98	22,876.55	14.77	.....	.....	2,100.00	1.36	2,153.
43	Cox Jones Commission Co.	5,073.12	77,936.65	15.36	18,935.00	3.73	6,107.00	1.20	18,326.
44	Frazer Johnson Co.	1,648.12	26,100.45	15.84	9,300.00	5.64	2,445.25	1.49	4,328.
45	Jacob Jacobs Livestock Commission Co.	907.36	13,863.35	15.28	4,630.00	5.10	2,713.00	2.99	2,993.
46	Martin Bros. & Co.	3,263.33	51,589.30	15.81	19,528.33	5.99	3,375.00	1.03	8,674.
47	L. E. Roberts & Co.	994.69	14,650.60	14.73	4,555.00	4.58	665.00	.67	2,992.
48	Tagg Bros. & Moorhead	5,132.03	83,431.50	16.26	7,350.00	1.43	7,236.00	1.41	18,300.
49	Geo. M. Wood Sheep Commission Co.	307.38	5,511.00	17.93	.....	.....	1,243.00	4.05	82.
51	Alex B. Buchanan & Son	1,852.16	27,110.65	14.64	6,480.00	3.50	1,210.00	.65	1,58.
52	Corn Belt Commission Co.	1,901.15	29,178.36	15.35	11,255.35	5.92	338.33	.18	2,20.
53	Fonda, Kells & Christie Co.	1,798.52	27,793.30	15.45	1,840.00	1.02	1,500.00	.84	3,18.
54	Jackson Livestock Co.	882.11	13,751.90	15.59	7,180.00	8.14	467.00	.53	77
56	Record Livestock Commission Co.	2,365.97	36,566.00	15.46	4,571.65	1.93	4,560.00	1.93	3,08
	Malone, Coffman Co.	833.63	12,680.80	15.21	2,100.00	2.52	1,460.00	1.75	1,54
		1,028.23	31,900.25	15.96	7,140.00	3.57	1,576.10	.79	1,6

(TABLE F HERE)

The Secretary's finding as to reasonable selling costs produces an average of $4.20 per car for the three species. Employee-salesmen's and buyers' salaries, as above tabulated, amount to $471,572.65, and these actual expenditures are nowhere in the evidence or order shown excessive or even criticized. The per car average over all species is $3.69. This total does not include any selling services performed by owners. Out of the finding as to reasonable cost of selling per car, therefore, there is left 51c per car, or about $64,000 for the 127,811.99 cars handled, to pay for the selling services of 93 13/20 owner-salesmen (*ante*, p. 27)). The 148 7/30 employed salesmen, (*ante*, p. 27) received an average of slightly under $3200.00 per year; this is not only not criticized as excessive, but a reasonable salary for a competent salesman is set up at a much higher figure; but the owners, whose skill and experience are naturally infinitely superior, are allowed for their services as salesmen, if the finding as to reasonable cost per car were applied directly to the situation as it exists, approximately $700.00 each per year.

No such rule of thumb application need, however, be made. After paying actual expenses, appellants, as a whole, have left $355,571.38. This does not make deduction for going concern value, supervision not included in "other salaries" or elsewhere in the books and audits (ante p. 31), or bad debts or other unpredictable losses. These are none the less out-of-pocket costs, which must be deducted before the owners have anything left for their own selling services and risk of business as such, to say nothing of "profit."

It does not essentially matter how these items are set up. Supervision not already included averages 63c per car (*ante*, 82, 101)) or $80,535.75. If we assume that bad debts would amount to 1% of commissions earned, or $19,834.33 (which would be moderate in a business involving nearly $200,000,000.00 worth of livestock per year), we should have $100,370.08 to set up as additional normal costs on account of those two items alone. Appellants would then have left $255,201.30, with no deduction yet made for going concern value, the return on which is part of the normal cost of doing business. In any case they would have left slightly less than $2.00 per car, out of which to reimburse themselves for going concern value, pay their salaries as salesmen and compensate themselves for the risk of the business as such.

If the 60 2/5 owner cattle salesmen, 26.5 owner hog salesmen and 6¾ owner sheep salesmen (*(ante*, p. 27)) were to be paid at the Secretary's normal selling salaries, they would be entitled to receive $441,750.00 for selling services alone. But it is not necessary to press the comparison even that far. The 27 "average or better" firms heretofore referred to, have 30 10/12 owner cattle salesmen, 15 owner hog salesmen and 3 owner sheep salesmen. These have that "opportunity to demonstrate their ability," which is the Secretary's standard of selling performance. On that basis they would be entitled to $229,166.66 for selling services only. What they actually have left out of the business, after paying actual costs, is shown in the following tabulation:

FIRM NO.	FIRM NAME	NO. CARS HANDLED 1925	COMMISSIONS UNDER SECRETARY'S ORDER Total	Per Car	EMPLOYEE SALESMEN'S AND BUYERS' SALARIES Total	Per Car	YARDMEN'S SALARIES Total	Per Car	OTHER SALARIES Total	Per
1	Bryson Bros.	2,466.99	$ 37,508.15	15.33	$ 7,800.00	3.19	$ 1,511.00	.62	$ 4,796.47	1.
4	Interstate Live Stock Commission Co.	4,206.38	64,899.20	15.43	8,535.00	2.03	4,128.75	.98	11,270.96	2.
6	Randall & Co.	1,907.72	30,143.85	15.80	2,400.00	1.26	1,356.00	.71	4,305.10	2.
7	W. R. Smith & Son	1,917.12	34,885.80	18.18	2,700.00	1.41	2,975.00	1.55	5,964.00	3.
8	Wood Brothers	5,251.35	81,597.51	15.54	14,925.00	2.84	8,049.00	1.53	10,350.00	1.
9	Bowles Livestock Co.	4,609.66	69,087.80	14.99	13,175.00	2.86	6,275.41	1.36	5,201.10	1.
13	Lindley Cahow Commission Co.	6,547.17	105,054.99	16.05	27,325.77	4.17	10,676.00	1.63	9,691.97	1.
14	John Ralston Commission Co.	2,750.38	40,674.20	14.79	19,496.81	7.09	2,112.50	.77	3,061.15	1.
18	John Clay	6,400.72	102,579.90	16.03	32,600.00	5.09	11,748.27	1.84	19,170.00	3.
19	Allen Dudley & Co.	2,138.74	32,486.90	15.19	7,210.00	3.37	2,281.70	1.07	2,395.57	1.
22	Omaha Livestock Commission Co.	3,506.39	52,991.99	15.11	12,500.00	3.57	2,250.00	.64	5,050.40	1.
23	Rosenbaum Bros. & Co.	2,416.85	38,398.20	15.89	22,463.34	9.29	7,070.75	2.93	6,923.65	2.
25	Bliss, Wellman & Hopkins	2,534.39	37,227.10	14.69	7,367.50	2.91	4,438.50	1.75	8,114.95	3.
27	Donahue Bros., Inc.	2,109.28	34,095.20	16.16	5,562.50	2.64	4,217.50	2.00	4,164.20	1.
28	Great Western Commission Co.	5,458.27	84,235.15	15.43	21,871.90	4.01	7,929.91	1.45	21,654.96	3.
29	Laverty Bros.	2,134.38	32,324.70	15.14	12,595.00	5.90	1,890.00	.88	2,299.60	1.
30	Mutual Livestock Commission Co.	3,952.25	59,639.90	15.09	10,337.50	2.62	6,099.16	1.54	4,247.99	1.
31	Chas. O. Robinson & Co.	2,919.07	44,571.70	15.27	24,104.09	8.26	5,972.50	2.05	11,018.60	3.
34	Byers Bros. & Co.	3,486.41	55,979.80	16.06	21,120.00	6.06	5,547.00	1.59	9,358.46	2.
38	Melady Bros.	2,803.71	42,108.10	15.02	12,551.15	4.47	5,402.50	1.93	7,385.81	2.
39	Roberts Bros. & Rose	6,572.40	101,454.50	15.44	14,310.00	2.18	12,602.70	1.92	13,953.80	2.
40	Triangle Livestock Commission Co.	2,234.20	34,753.15	15.56	3,000.00	1.34	4,800.00	2.15	3,241.00	1.
43	Cox Jones Commission Co.	5,073.12	77,936.65	15.36	18,935.00	3.73	6,107.00	1.20	18,326.15	3.
46	Martin Bros. & Co.	3,263.33	51,589.30	15.81	19,528.33	5.99	3,375.00	1.03	8,674.18	2.
48	Tagg Bros. & Moorhead	5,132.03	83,431.50	16.26	7,350.00	1.43	7,236.00	1.41	18,300.00	3.
56	Record Livestock Commission Co.	2,365.97	36,566.00	15.46	4,571.65	1.93	4,560.00	1.93	3,088.06	1.
58	Wood-Oswald	1,998.23	31,900.25	15.96	7,140.00	3.57	1,576.10	.79	4,686.90	2.
		96,136.51	$1,498,121.49	15.58	$361.475.54	3.76	$142,188.25	1.48	$226,695.03	2.

IER ARIES		ADVERTISING TRAVEL AND ENTERTAINMENT		EXCHANGE ASSESSMENTS AND DUES		OTHER EXPENSES		OTHER DEDUCTIONS		ADDITIONAL RENT		TOTAL ACTUAL OUTLAY	
	Per Car	Total	Per Car	Total	Per Car	Total	Per Car	Total	Per Car	Total	Per Car	Total	Per Car
.47	1.96	$ 6,489.51	2.65	$ 482.74	.20	$ 3,423.04	1.40	$ 28.37	.01	$1,013.04	.41	$ 25,556.92	10.44
.96	2.68	11,600.33	2.76	1,135.00	.27	4,706.84	1.12	156.73	.04	1,411.56	.34	42,945.17	10.21
.10	2.26	4,962.24	2.60	659.88	.34	3,741.08	1.96	348.38	.18	759.78	.40	18,532.46	9.71
.00	3.11	8,957.60	4.67	310.10	.16	3,497.66	1.82	1,757.50	.92	687.42	.36	26,849.28	14.01
.00	1.97	26,971.65	5.14	1,307.05	.25	10,566.29	2.01	1,898.61	.36	1,700.46	.32	75,768.06	14.43
.10	1.13	10,638.21	2.31	1,183.39	.26	7,343.16	1.59	525.21	.11	1,700.46	.37	46,041.94	9.99
.97	1.48	14,793.67	2.26	1,542.19	.24	9,759.97	1.49	1,786.77	.27	976.86	.15	76,553.20	11.69
.15	1.11	5,309.24	1.93	677.12	.25	2,959.18	1.08	517.30	.19	506.52	.18	34,639.82	12.59
.00	3.00	27,035.51	4.22	1,520.75	.24	10,926.74	1.71	755.04	.12	3,979.80	.62	107,736.11	16.83
.57	1.12	3,424.07	1.60	327.85	.15	3,259.47	1.52	40.29	.02	941.22	.44	19,799.59	9.26
.40	1.44	6,545.55	1.87	872.08	.25	5,134.74	1.46	.....	.....	1,013.04	.29	33,365.81	9.52
.65	2.86	9,195.74	3.81	663.65	.27	4,783.28	1.98	188.67	.08	1,222.56	.51	52,511.64	21.73
.95	3.20	4,664.56	1.84	459.21	.18	4,852.88	1.92	59.18	.02	940.68	.37	30,897.46	12.19
.20	1.97	4,682.83	2.22	618.57	.29	4,314.91	2.05	21.50	.01	940.68	.44	24,522.69	11.63
.96	3.97	12,387.72	2.27	1,281.04	.23	6,256.39	1.15	618.94	.11	2,460.24	.45	74,461.10	13.64
.60	1.08	3,388.74	1.59	621.10	.29	1,517.94	.71	.....	.....	1,013.58	.47	23,325.96	10.93
.99	1.08	5,992.86	1.51	878.31	.22	3,748.68	.95	587.59	.15	1,193.94	.30	33,086.03	8.37
.60	3.78	7,423.91	2.54	804.32	.28	7,215.40	2.47	1,065.87	.36	2,387.88	.82	59,992.57	20.55
.46	2.69	6,690.19	1.92	777.34	.22	4,769.94	1.37	29.09	.01	1,013.04	.29	49,305.06	14.14
.81	2.63	7,084.87	2.53	578.72	.21	4,074.51	1.45	1,070.46	.38	1,121.58	.40	39,269.60	14.01
.80	2.12	23,686.73	3.61	1,456.59	.22	10,877.54	1.65	7.47	.....	1,989.90	.30	78,884.73	12.00
.00	1.45	7,877.50	3.53	483.79	.22	2,549.00	1.14	7.03	.....	955.26	.43	22,913.58	10.26
.15	3.61	10,938.20	2.16	998.45	.20	4,107.61	.81	141.42	.03	1,013.04	.20	60,566.87	11.94
.18	2.66	6,532.16	2.00	724.10	.22	4,829.43	1.48	84.40	.03	1,303.02	.40	45,050.62	13.81
.00	3.57	13,376.45	2.60	1,068.90	.21	8,955.42	1.75	511.55	.10	1,230.12	.24	57,005.34	11.11
.05	1.31	4,242.34	1.79	620.19	.26	2,760.76	1.17	154.27	.06	470.34	.20	20,467.61	8.65
.90	2.34	5,378.74	2.70	597.37	.30	5,842.45	2.92	130.40	.07	1,085.40	.54	26,437.36	13.23
.03	2.36	$260,271.12	2.71	$22,649.80	.24	$146,774.31	1.53	$11,401.11	.12	$35,031.42	.36	$1,206,486.58	12.55

Car	INTEREST ON INVESTMENT Total	Per Car	INTEREST ON INVESTMENT OMITTED Total	Per Car	DEPRECIATION OMITTED Total	Per Car	TOTAL FOR SERVICES AND RISK Total	Per Car
44	$ 967.02	.40	$ 560.00	.23	$		$10,436.96	4.26
21	1,578.35	.37			326.30	.08	20,049.38	4.77
71	546.42	.29					11,064.97	5.80
01	1,301.54	.68	560.00	.29			6,174.98	3.22
43	3,131.16	.60	1,960.00	.37			738.29	.14
99	3,979.17	.86					19,066.69	4.14
59	1,323.23	.20	1,120.00	.17			26,058.56	3.98
59	3,834.48	1.39	280.00	.10	132.50	.05	1,787.40	.65
83	475.83	.07	2,800.00	.44	125.18	.02	8,557.22	1.34
26	526.47	.25	560.00	.26	114.45	.05	11,486.39	5.37
52	1,620.99	.46	280.00	.08			17,725.19	5.06
73	238.64	.10					14,352.08	5.94
19	975.06	.39					5,354.58	2.11
53	1,452.39	.69					8,120.12	3.85
64	3,661.80	.67	280.00	.05	653.41	.12	5,178.84	.95
93	121.33	.06			100.00	.05	8,777.41	4.11
37	709.82	.18	560.00	.14			25,284.05	6.40
55	567.78	.19			542.06	.19	16,530.71	5.66
14	1,407.29	.40			225.00	.06	5,042.45	1.45
01	724.41	.26					2,114.09	.75
00	866.40	.13					21,703.37	3.30
26	741.27	.33	840.00	.38	488.52	.22	9,769.78	4.37
04	2,285.49	.45					15,084.29	2.97
31	3,307.72	1.01	1,400.00	.43	73.27	.02	1,757.69	.54
11	3,090.87	.60	1,680.00	.33			21,655.29	4.22
65	1,109.58	.47			865.25	.37	14,123.56	5.97
23	978.55	.49			364.17	.18	4,120.17	2.06
65	$41,523.06	.43	$12,880.00	.13	$4,010.11	.04	$233,234.49	2.43

(TABLE G HERE)

And again it must be noted that bad debts, going concern value, and supervision (except in the one or two instances where employed) are yet to be taken care of, before we reach "profits".

The actual facts, however, are still more striking. The foregoing tables assume the receipt by appellants of the *total possible revenue* under the Secretary's order. As the undisputed evidence shows, however, they will not receive the authorized increase on "seconds," which will result in a total reduction in actual revenue received, to all firms, of $62,172.19, (Ex. 103, R. 798). The actual total to all appellants for going concern value, bad debts, omitted supervision, selling services and risk of business or "profit" is therefore but $293,400.19 or $2.29 per car. The actual net balance on the foregoing basis to each of the 27 "average or better" firms will be as follows:

Firm		Per Car
1	$ 9,166.43	$ 3.74
4	17,583.83	4.18
6	10,339.27	5.47
7	6.164.18	3.21
8	1,638.53	.31
9	18,117.17	3.93
13	24,465.84	3.73
14	98.05	.03
18	9,620.74	1.50
19	8,156.69	3.81
22	15,829.35	4.51
23	15,115.68	6.25
25	2,793.30	1.10
27	8,016.11	3.80
28	4.760.21	.87
29	7,314.70	3.43
30	20,613.49	5.21
31	18,087.02	6.19
34	1,832.35	.52
38	737.94	.22
39	18,562.33	2.82
40	9,121.54	4.08
43	14,197.35	2.79
46	1,171.31	.36
48	19,941.97	3.88
56	13,660.26	5.77
58	3,789.31	1.89
	$191,774.91	$ 1.99

Firm	Per Car

The foregoing figures dispose of any suggestion, which may be made herein, that appellants are merely a group who show a failure to realize a profit in the aggregate, such as was referred to, although not directly passed upon, in *Aetna Insurance Com-*

pany v. Hyde, 275 U. S. 440. Most of the individual results above tabulated are so low as to speak for themselves. But if we apply the proper analysis to any individual firm, as the regulating authority should have done in this case, deduct the omitted items, and make any adjustment which the special conditions, if any, affecting a particular business may warrant, we still encounter the same deficit in each case; keeping in mind that in such process we seek what the Secretary should have sought—true balances—what the owners have left after paying the items on their books meaning nothing until all deductions, which should have been set up as part of a sound rate base, have been taken into account.

It must be noted that the Secretary allowed a margin of "profit" after setting up his cost schedule, of but $1.75, $2.15 and $1.95 per car for cattle, hogs and sheep respectively (R. 36). Appellants' business is one in which normal variations are many and important. Not only are crop, weather and other conditions unpredictable; but shifts of patronage from market to market, and the effects of changes in public taste and other developments in the business of meat production are drastic and far reaching. These factors create conditions which make the service rendered extremely valuable and the risk of those rendering the service extremely great. These conditions not only justify but require a rate high enough to compensate for the risk assumed in entering and continuing in the business. The Secretary's margin of "pure profit" is so narrow as to be palpably absurd and unjust.

Finally, it must be noted herein that the special master in his report (R. 57-145) sets forth the processes whereby he arrived at his conclusion that the rate is confiscatory. No doubt the Secretary went through some process of analysis and investigation before he arrived at his own conclusion. Those who conducted that process for him did not take the witness stand, and the process remains, as it did in the beginning, shrouded in mystery. In that state of the record the burden should rest upon appellees to show that the process adopted by the Secretary is sound and that adopted by the master, and the conclusions thereby reached, unsound. The overwhelming weight of the evidence shows that his findings were correct, whether the problem be approached from the point of view he adopted, or from any other presented by the record herein.

———o———

CONCLUSION.

To summarize: The underlying statute as applied to personal services such as those rendered by petitioners is unconstitutional.

The statute itself confers no power upon the Secretary to make an order compelling a market agency to follow the rate schedule prescribed by him.

The court has full power and jurisdiction to review the Secretary's order and determine not only whether it was within the powers conferred upon him, but also whether or not it was unsupported by substantial evidence, whether it disregarded undisputed evidence, and whether, considering the evidence as a whole, it deprived appellants of their constitutional rights.

The rates prescribed in the order are unreasonable, non-compensatory and unfair, and confiscate petitioners' property rights in the capital used in their businesses, and in the skill, experience and personal services devoted thereto. The order disregards accepted standards of rate-making. It not only adopts an inherently fallacious standard, but proceeds by erroneous and unconstitutional methods to arrive at a theoretical selling cost, in disregard of the actual facts. It disallows reasonable and necessary expenses without proof of abuse of discretion by appellants. It omits items of basic cost, essential to a valid rate. It is based upon irrelevant considerations of the economic situation of appellants' patrons, invokes questions of public policy having no connection with the inherent reasonableness of appellants' rates, and is based upon complete misunderstanding of appellants' economic

function, and complete disregard of the really controlling factors in the industry they serve. It is based upon the unconstitutional theory of deliberate elimination by rate-making of established industries. It justifies radical reductions on the theory of purely speculative increases which the undisputed evidence shows cannot be realized. It arbitrarily selects the market served by appellants as a place to begin commission rate revision, notwithstanding the vital relation of the markets with each other, and in disregard of precedents established by the Secretary himself. It prescribes a rate which is generally unreasonable, considered in relation to the record as a whole and the general situation disclosed thereby. It ruins many appellants outright, and deprives the remainder of the chance to earn a fair living in the vocation to which their whole lives have been devoted, and their right to follow which is both an inherent and a vested one. Even the cost of service theory, properly applied, with a reasonable profit added, would result in a rate base which makes Tariff No. 2 unquestionably reasonable.

The decision of the district court should be reversed with directions to grant a permanent injunction.

Respectfully submitted,

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APPENDIX

THE STATUTES INVOLVED.

The powers of the Secretary of Agriculture, by virtue of which the order sought to be suspended was issued in this case, are defined in Secs. 309 and 310 of the Packers & Stockyards Act (Act of August 15, 1921, C-64, 42 St. L. 165; U. S. C. 1925, Title 7, Chapter 9, Secs. 210 and 211) which are as follows:

"210. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereafter in this section referred to as the 'defendant') in violation of the provisions of sections 205, 206, 207, or 208 of this chapter, or of an order of the Secretary made under sections 201 to 217, inclusive, of this chapter, may, at any time within ninety days after the cause if action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the livestock commissioner, board of agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall in-

vestigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the secretary, by any provision of section 201 to 217, inclusive, of this chapter, or concerning which any question may arise under any of the provisions of sections 201 to 217, inclusive, of this chapter, or relating to the enforcement of any of the provisions of sections 201 to 217, inclusive, of this chapter. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) If after hearing on a complaint the Secreatry determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court hav-

ing general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit. (Aug. 15, 1921, c. 64, Sec. 309, 42 Stat. 165).

"211. Whenever after full hearing upon a complaint made as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory. The Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and non-discriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum

> or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, Sec. 310, 42 Stat. 166)".

It will be noted that under the foregoing section a distinction is made between orders promulgating schedules of rates and orders finding that reparation is due individuals—the same distinction which prevails throughout the acts regulating commerce. Other sections give the Secretary power to prescribe rates and practices, to prevent discrimination between intrastate and interstate commerce, and to prevent unfair, discriminatory or deceptive practices. All of these, like orders setting up rate schedules generally, are subject to the same distinction as compared with orders requiring the payment of money to individuals. This distinction is given express sanction by Section 313 of the Act (U. S. C. 1925, Title 7, Sec. 214) which reads:

> "214. Except as otherwise provided in this chapter all orders of the Secretary under sections 201 to 217, inclusive, of this chapter, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside, by a court of competent jurisdiction. (Aug. 15, 1921, c. 64, Sec. 313, 42 Stat. 167)".

In Section 315 (U. S. C. 1925, Title 7, Sec. 216) also it is provided that obedience to orders, other than for the payment of money, may be enforced either by the Sec-

retary, or by any injured party, by mandatory injunction issued by the district court of the district in which the person injured has his principal place of business. And cases like the one at bar, in which parties affected by an order of the Secretary seek to suspend the same, are provided for by Section 316 of the Act (U. S. C. 1925, Title 7, Sec. 217) which is as follows:

> "217. For the purposes of sections 201 to 217, inclusive, of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of section 201 to 217, inclusive, of this chapter, and to any person subject to the provisions of sections 201 to 217, inclusive, of this chapter. (Aug. 15, 1921, c. 64, Sec. 316, 42 Stat. 168)."

Comparing the Packers and Stockyards Act with the act to regulate commerce it appears that provision is made for the taking effect of orders of the Interstate Commerce Commission, other than those for the payment of money, by U. S. C. 1925, Title 49, Sec. 15 (2), in language almost identical with that used in Section 313 of the Packers and Stockyards Act, above quoted. So also by Section 16 of the Interstate Commerce Act as amended by later statutes (U. S. C. 1925, Title 49, Sec. 16), in sub-paragraph 2, provision is made for the enforcement of orders for the payment of money in language identical with that used in Section 309 (f) of the Packers and Stockyards Act, above quoted, the latter having been copied from the former when the Packers and Stockyards Act was enacted.

It may be noted in passing that the Interstate Commerce Act formerly included a provision making all orders of the Commission, in subsequent suits to annul or enjoin them, prima facie evidence of the facts found in such orders. In other words, the provision that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated formerly applied to rate and anti-discrimination orders as well as those for reparation, these provisions having been eliminated when the statute was amended in 1906 (34 St. L. Ch. 349, p. 584).

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1929

No. 45

TAGG BROS. & MOORHEAD, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA, *et al.*,
Appellees.

Separate Brief for Appellants on the Question of the Constitutionality of the Rate Making Provisions of the Packers and Stockyards Act of 1921, insofar as they apply (as claimed by Appellees) to the Commissions of the Commission Men.

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The opinion below is reported in 29 Fed. 2nd., 750. The statement of the case, the statutes involved, the specification of the assigned errors, and argument on other questions in the case, than that here discussed, are found in a separate brief for appellants and are omitted here to avoid useless repetition.

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I

There is here presented an important question in constitutional law—the power of Congress in the exercise of its rate making authority, to fix prices for purely personal services (such as that of the commission men, for grading and selling cattle). The question is similar to that presented to the Court in the "Minimum Wage Cases," *Adkins v. Children's Hospital,* 261 U. S. 525, *Adkins* v. *Lyons,* 261 U. S. 525, *Murphy* v. *Sardell,* 269 U. S. 530; in the "Kansas Industrial Court Cases,"

Wolff Co. v. *Industrial Court,* 262 U. S. 522; in the "Ticket Brokers Cases," *Weller* v. *N. Y.,* 268 U. S. 319; *Tyson & Bro.* v. *Banton,* 273 U. S. 418; and in the "Employment Agency Case," *Ribnik* v. *McBride,* 277 U. S. 350. We submit that these decisions are conclusive and require that this appeal should be sustained.

Fortunately, the premises upon which the conclusion must be based are not in dispute. It is not questioned that the services, the compensation for which is sought to be fixed by law, are *purely personal services.* The commissions are only wages for the labor of the commission men. The Secretary of Agriculture so found in making the price fixing regulation here in question, and the testimony is uncontradicted that the services are those of skilled brokers, who handle cattle on arrival at the stockyards, grade them, put them in condition for sale, sell them to the buyer, and after deducting commission, remit the proceeds to the owner. The business is wholly one of skill and labor, with the elements of capital or other property investment negligible.

These commission men are not employees or owners of the stockyards and have no interest, direct or indirect, in the profits of the stockyards, or their "yardage" charges, nor has the stockyards any share of the compensation of the commission men. The stockyards company charges the shippers of cattle a so-called "yardage" charge per head of cattle. We do not question the power of Congress to regulate such "yardage" charges, for the stockyards are property devoted to a public use. Any man can become a commission man. He simply holds himself out to the shippers of cattle as one who can take care, in their behalf and as their representative, of the cattle on arrival at the stockyards and, as their broker, to dispose of them to the public. His only implements of trade are a horse on which to ride and a desk to keep his accounts. On the arrival of the cattle he sorts them into grades, puts them in the pens of the

stockyards, waters and feeds them and then sells them as rapidly as possible and to the best advantage. He then remits the proceeds to the shipper, less his compensation. His contracts are wholly with the shippers of the cattle.

It is skilled labor, for the commission man must know the value of cattle and the details of their care in preparing them for the market. It is also physical labor, as he must ride on horseback, often from morning to night, through the incoming herds of cattle in order to classify the shipments and he must attend to their physical wants to put them in the best condition for sale. Thus his services are those of skilled labor and the commission paid him by the shipper (not by the stockyards company) is his wages for his arduous toil.

As in all skilled labor, the commission men differ between themselves in the length of their experience, their relative aptitude for the work and their individual industry. To prescribe a common maximum of earning power is to penalize the skillful for the benefit of the unskillful.

II

The appellees contend that Section 310 of the Packers and Stockyards Act of 1921, authorizes the Secretary of Agriculture to determine and prescribe the rates or charges that may be exacted by the commission men, called, in the Act, "market agencies"; and the Secretary has so fixed such rates or charges as to the commission men at the stockyards in Omaha.

Our contention is that if the Act is to be construed as so authorizing the Secretary, the rate making provisions of the Act, so far as they apply to commission men, are beyond the power of the federal government conferred by the Constitution, and violative of the Fifth Amendment, which provides that no person shall be deprived "of life, liberty or property without due process of law,

nor shall private property be taken for public use without just compensation."

The principles upon which this question must be decided have been settled in a long line of decisions of this Court interpreting the Fifth and Fourteenth Amendments.

We may put aside the theories which support the power of the state to protect itself by those regulations directly affecting the public health, safety or morals, and only indirectly affecting property rights and rights of individual liberty—rights which must yield to the general good without that compensation provided in the Constitution for the taking of property. For we are dealing here with a more limited field of governmental activity, *Tyson & Bro.* v. *Banton,* 273 U. S. 418, 431—the rate-making power, the exercise of which *does,* primarily and admittedly, affect individual property rights and individual liberty to earn a living; which does (whatever its justification in the supposed public interest), obviously and intentionally, constitute a redistribution of wealth, a "leveling of inequalities of fortune by depriving one who has property of some part," a "compulsory exaction" from one for the support of another, a *taking,* directly, of some part of the property (wages, salary, income, return on investment, etc.) from A and handing it over to B. *Coppage* v. *Kansas,* 236 U. S. 1, 18; *Adkins* v. *Children's Hospital,* 261 U. S. 525, 557. To quote Jefferson's phrase in his first inaugural, this fixing of wages for personal service "takes from the mouth of labor the bread it has earned."

In this field of legislation, also, the principles which govern the constitutionality of the exercise of the power are now well settled, particularly by the more recent decisions of this Court.

The first of these principles is that immunity from price fixing is the rule and not the exception. This thought has been voiced and reiterated in every ex-

pression on the subject by this Court from the earliest to the latest.

In *Patterson* v. *Bark Eudora,* 190 U. S. 169, Mr. Justice Brewer laid down the "proposition" that,

> "Generally speaking, every citizen has a right freely to contract for the *price* of his labor, services or property."

In the most recent discussion of the question, *Ribnik* v. *McBride,* 277 U. S. 350, this Court said:

> "Under the decisions of this Court it is no longer fairly open to question that, at least in the absence of a grave emergency, the *fixing of prices* for food or clothing, of house rental, *or of wages to be paid,* whether minimum or maximum, is beyond the legislative power."

And with special reference to price fixing for personal services, Mr. Justice Harlan, speaking for the Court, in *Adair* v. *United States,* 208 U. S. 161 (quoted in *Adkins* v. *Children's Hospital,* supra, 545), said in even more emphatic terms:

> "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. . . . In all such particulars the employer and employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

The second of these principles is that the guaranties against deprivation of liberty and property in the Bill of Rights of the Constitution are not to be swept away or impaired by the other provisions of the Constitution

granting specific powers to Congress, such as the commerce clause. As said by Mr. Justice Brewer, in *Monongahela Navigation Co.* v. *United States,* 148 U. S. 310, 336:

> "But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the Fifth Amendment."

In *Adair* v. *United States,* 208 U. S. 161, 180, Mr. Justice Harlan reiterated

> "We need scarcely repeat what this Court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution. Gibbons v. Ogden, 9 Wheat. 1, 196; Lottery Case, 188 U. S. 321, 353."

Finally, with special reference to price fixing for personal services, Chief Justice White, after inquiring into the extent of the commerce power and affirming that the regulation of the business of common carriers was so clearly within that power, as settled by many decisions, state and Federal, as "to leave no room for question on the subject," added the significant language (*Wilson* v. *New,* 243 U. S. 332, 347):

> "It is also *equally true* that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is primarily private, the establishment and giving effect to such agreed-on standard is not subject to be controlled or prevented by public authority."

The third principle is that desirability of the legislation as a speedy remedy for the supposed evils, and the

difficulty of dealing with the supposed evils by other methods, constitute no warrant for resort to price fixing.

In the case of *Hurtado* v. *California,* 110 U. S. 516, Mr. Justice Matthews used the following language, referring to the powers granted to Congress under the Constitution:

> "But it is not to be supposed that these legislative powers are absolute and despotic, and that the Amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. • • •
>
> " 'It must be conceded,' said this court, speaking by Mr. Justice Miller in *Loan Asso.* v. *Topeka,* 20 Wall. 655-662, 'that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after al but a despotism.' "

In *Bailey* v. *Drexel Furniture Co.,* 259 U. S. 20, 37, Chief Justice Taft, delivering the opinion of the Court on the question of the constitutionality of the Child Labor Law, said:

> "The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards."

Mr. Justice Holmes, in *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 394, referring to the protection of private property in the Fifth Amendment, said:

> "When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States. * * *
>
> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

And more recently, referring particularly to price-fixing for personal services, this Court said (*Tyson & Bro.* v. *Banton*, 273 U. S. 418-442):

> "But the difficulty or even the impossibility of thus dealing with the evils, if that should be conceded, constitutes no warrant for suppressing them by methods precluded by the Constitution. Such subversions are not only illegitimate but are fraught with the danger that, having begun on the ground of necessity, they will continue on the score of expediency, and, finally, as a mere matter of course. Constitutional principles, applied as they are written, it must be assumed, operate justly and wisely as a general thing, and they may not be remolded by law-makers or judges to save exceptional cases of inconvenience, hardship or injustice."

And, again, *Ribnik* v. *McBride* (277 U. S. 350, 358):

> "And we since have held definitely that the power to require a license for and to regulate the conduct of a business is distinct from the power to fix prices. 'The latter power is not only a more definite and serious invasion of the rights of property and the freedom of contract, but its exercise cannot always be justified by circumstances which

have been held to justify legislative regulation of the manner in which a business shall be carried on.'

"To urge that extortion, fraud, imposition, discrimination and the like have been practiced to some, or to a great, extent in connection with the business here under consideration, or that the business is one lending itself peculiarly to such evils, is simply to restate grounds already fully considered by this Court. These are grounds for regulation but not for price fixing, as we have already definitely decided."

The fourth principle, and the one most important to the proposition for which we are here contending, is that price fixing, being a direct taking of property for a supposed public benefit, can not be resorted to unless "just compensation" is given in return, and that just compensation requires an adequate and reasonable return upon the fair market value of that which is devoted to public use, or, as it is sometimes expressed, "affected with a public interest."

Smyth v. *Ames,* 169 U. S. 466;
Cotting v. *Goddard,* 183 U. S. 79, 91;
New York v. *Public Service Commission,* 269 U. S. 243, 248;
Board v. *N. Y. Telephone Co.,* 271 U. S. 23;
Ohio Valley Water Co. v. *Ben Avon Borough,* 253 U. S. 287.

"As to parties engaged in performing a public service while the power to regulate has been sustained, negatively the Court has held that the legislature may not prescribe rates which, if in force, would amount to a confiscation of property."

Cotting v. *Goddard,* supra.

"What the company is entitled to ask is a fair return upon the value of that which it employs for a public convenience."

Smyth v. *Ames*, supra.

> "The just compensation safe-guarded • • • is a reasonable return on the value of the property used at the time that it is being used for a public service, and rates not sufficient to yield that return are confiscatory."

Board v. *N. Y. Telephone Co.*, supra.

III

These principles suggest the vital distinctions, from the constitutional standpoint, in all legislative price fixing between *property* and the use of property, on the one hand, and *personal services*, on the other.

First, property originates with the state and reverts to the state (*Commonwealth* v. *Alger*, 7 Cush. 84; *Holden* v. *Hardy*, 169 U. S. 366, 392), it is held in a sense at the will of the state. Liberty is not held at the will of the state; its existence is a prerequisite to the very organization of a government of the people such as ours, and the liberty that is meant in the Constitution is not merely the freedom from physical restraint, it includes liberty to work for a living by using the powers of brain and muscle; indeed, that is of the very essence of liberty protected in the Bill of Rights. "It requires no argument," said Mr. Justice Hughes, in *Truax* v. *Raich*, 239 U. S. 33, 41, "to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure."

Second, property may be taken by the state for public use. This power is inherent in the state. But liberty—personal services—may not be taken by the state for public use or any other use except as a punishment for crime or in a time of war.

Third, property, in our theory of government, always has its equivalent in money or other thing of value. So when property is taken for public use, either by taking the property directly or by taking indirectly by diminishing the income from the property, this equivalent may always be given in return, and thus the amount of property held by the individual is not diminished or impaired. When the use of *property* is regulated by price fixing, the method by which this equivalent is secured has been carefully worked out in our system of government; we ascertain the fair value of the property devoted to the public use and allow an adequate return on this value, and thus avoid confiscation.

But liberty has no actual or theoretical equivalent in money. The skill of the artist can not be compensated for by substituting the skill of the poet. The lawyer can not have his personal services as a lawyer taken away and receive just compensation by being allowed to practice medicine.

So when prices are fixed for personal services, there is no capital invested upon which an adequate and just return may be calculated. When a man devotes his brain and brawn to the earning of a livelihood, how is the Court to calculate a rate of return on the investment when nothing is invested which may be measured in dollars and cents? How can the Court fix six percent on brain power or six percent on the sweat of the brow and thus determine that there has been an adequate return, and so no confiscation?

Fourth, so when the use of *property* is regulated by price fixing, the constitutional guaranty that property shall not be taken without just compensation may be fulfilled; but when *personal services* are regulated by price fixing, there can be no equivalent offered and the constitutional guaranty can not be fulfilled.

Fifth, it follows from these rules as to property and as to personal services that, just as *property* may be

taken for a public use, so by the manner of its use it may, under certain circumstances, be said to have been dedicated to a public use or devoted to a public use or used in such a way that the public has an interest in its use, and thus arises a right to fix rates; but, by like token, personal services which *can not* be taken for a public use, also, by their very nature, *can not* be said to be dedicated to a public use or devoted to a public purpose, whatever may be the manner in which they are used, and whether the characterization of "public use" is by judicial reasoning or legislative declaration. This would be "running the public interest argument into the ground," as said by this Court in *Wolff* v. *Industrial Court*, 262 U. S. 522, 539; using the expression of Mr. Justice Bradley in the *Civil Rights Cases*, 109 U. S. 3, 24.

This thought, that personal services can not be, in the very nature of things, said to be devoted to a public use, has been several times expressed by this Court. In *Ribnik* v. *McBride*, 277 U. S. 350 this court reaffirmed its previous statement in *Wolff* v. *Industrial Court*, *supra*:

> "It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation. . . . one does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances."

And the Court added to these instances personal services generally, even where the pay was in the form of commission instead of wages, citing such services as those of the real estate broker, the ship broker, the

merchandise broker, the ticket broker, and the employment agency, adding—

> "The public is deeply interested in all these things. The welfare of its constituent members depends upon them. The interest of the public in the matter of employment is not different in quality or character from its interest in the other things enumerated; but in none of them is the interest that 'public interest' *which the law contemplates as the basis for legislative price control.*"

Again, in *Wolff* v. *Industrial Court*, 262 U. S. 522, 539:

> "If, as in effect contended by counsel for the State, the common callings are clothed with a public interest by a mere legislative declaration, which necessarily authorizes full and comprehensive regulation within legislative discretion, there must be a revolution in the relation of government to general business. * * * It will be impossible to reconcile such result with the freedom of contract and of labor secured by the Fourteenth Amendment."

It follows from these distinctions between property and personal services that the very *basis* for legislative price control, the *sine qua non* of the exercise of the rate-making power, is wholly absent in the case of personal services, wherever they may be performed, in connection with whatever business they may be given, regardless of the public interest, and regardless of whatever grant of power in the Constitution is claimed to support the regulation.

The essential differences between "property" and "personal services," which we have pointed out, have their basis in the Constitution itself. "Property" and "liberty" may not be taken without due process of law, is the mandate of the Constitution, but in the same pro-

vision is the authority to take property upon the payment of "just compensation." Thus, property may be taken (a) by due process, that is, by determining in the usual methods the public need, etc., and (b) upon paying fair value, or in the case the taking is by price fixing, an adequate return on the property devoted to a public use. Liberty, including personal services, can be taken by due process only, that is, by determining the commission of the crime for which punishment is required.

These essential constitutional differences between "property" and "personal services" in respect of their liability to or immunity from "price fixing"—by which it may be affirmed that property, including the use of property, may be "taken" in the constitutional sense, under certain circumstances and conditions, but personal services may never be taken, whatever the circumstances and conditions—is not new or startling. It underlies all the authoritative decisions of this Court on the subject of the rate-making power. It determines the result in every case, and so it is that while regulation of the use of property by price fixing has always been sustained where (a) the property was devoted to a public use, and (b) just compensation could be made, regulation of personal services by price fixing has always been denied, whatever may have been the public interest in such services, and whatever the reasonableness of the price fixed. (The fixing of fees as a condition to the granting of a bounty by the state and the stipulation of wages as a condition of work for the state are, of course, not really exceptions, but rather affirmances of the rule.)

IV

A brief review of all the leading cases in this Court on the subject now under consideration will show that these contentions are consistent with the conclusion in every single case, without exception.

Frisbie v. *United States,* 157 U. S. 160. (Regulation of Congress forbidding attorneys to receive more than a certain amount for prosecuting claims for pensions, held constitutional on ground that the pension is a bounty, and the terms upon which it may be granted or withheld, are wholly within the discretion of Congress; at the same time affirming the doctrine that except for this right to control bounties from the government, every citizen has the right, free from legislative control, to fix the price for his labor and services.)

Holden v. *Hardy,* 169 U. S. 366. (Statute limiting the employment of workmen in under-ground mines, held constitutional solely on the ground that it was a provision for preserving the public health, the Court disclaiming any intention of holding that regulations not primarily for the public health but primarily to restrict employment, would be constitutional.)

Knovville Iron Co. v. *Harbison,* 183 U. S. 13. (Regulation requiring the redemption of store orders issued in payment of wages; held constitutional on the ground that it primarily and directly affected the public morals and safety.)

Patterson v. *Bark Eudora,* 190 U. S. 169. (Regulation making it a misdemeanor to pay seamen wages in advance; held constitutional on the ground that it was a measure directly affecting public morals, and as in *Holden* v. *Hardy, supra,* not affecting in any way the amount of the wages.)

Adair v. *United States,* 208 U. S. 161. (Act mak- it a criminal offense for any railroad company to discharge an employee on the ground that he was a member of a labor union; held unconstitutional on the ground that it was an interference with the freedom of employer and employee to fix the terms of employment, being related to that term (similar to the amount of wages) which has no direct relation to the health, safety or morals, but is intended to be primarily a restriction upon

the terms for the mere purpose of imposing such restrictions. Further, that the commerce clause gave no added right to thus arbitrarily fix the terms of employment, even though the employment was in the course of interstate commerce.)

Muller v. *Oregon,* 208 U. S. 412. (Statute limiting the hours of labor of women; held constitutional on the ground that it was a public health regulation, and assuming, as stated by Mr. Justice McKenna in *Wilson* v. *New, infra,* that the interest of the state terminated with the hours of service, and amount of compensation would be left to the agreement of the parties.)

McLean v. *Arkansas,* 211 U. S. 539. (Regulation requiring coal to be measured for payment of miners' wages, before screening; held constitutional on the ground that it was a measure to prevent fraud and requiring honest weights and measures in the transaction of business; but affirming the freedom of the right, under the Fourteenth Amendment, to make contracts for the sale of labor and to carry on trade or business.)

Riley v. *Mass,* 232 U. S. 671. (State statute limiting the hours of labor in factories for women; held constitutional following *Muller* v. *Oregon, supra.*

Smith v. *Texas,* 233 U. S. 630. (State statute prohibiting any person from acting as conductor on a passenger train without having for two years prior thereto worked as brakeman or conductor of a freight train; held unconstitutional, affirming the doctrine that the liberty protected by the Constitution means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use the powers of mind and body in any lawful calling.)

Erie Railroad Co. v. *Williams,* 233 U. S. 685. (State statute requiring semi-monthly payment of wages of employees of certain specified industries, including railroads; held constitutional as an exercise of police power

to protect the public morals and safety, following *Knoxville Iron Co.* v. *Harbison, supra,* and *McLean* v. *Arkansas, supra.*)

Coppage v. *Kansas,* 236 U. S. 1. (State statute making it a misdemeanor for an employer to require an employee not to become a member of a labor union; held unconstitutional as legislative interference with a term of employment which was not directly and primarily for the public health, safety or morals, but affecting the term of the contract for the primary purpose of restricting that term.

Miller v. *Wilson,* 236 U. S. 373. (Statute fixing maximum hours of labor for female workers; held constitutional as a health measure on the reasoning of *Muller* v. *Oregon, supra.*)

Bosley v. *McLaughlin,* 236 U. S. 385. (Statute limiting the hours of labor for women in certain employments, including hospitals; held constitutional as a health measure on the reasoning of *Muller* v. *Oregon, supra.*)

Truax v. *Raich,* 239 U. S. 33. (Arizona statute regulating the employment of aliens, and requiring that employers should employ not less than 80 per cent qualified electors or native born citizens; held unconstitutional on the ground that it was an interference with freedom of employment not directly relating to public health, safety or morals, and affirming the doctrine that the right to work for a living in the common occupations of the community is of the very essence of personal freedom that it was the purpose of the Fourteenth Amendment to secure.)

Wilson v. *New,* 243 U. S. 332. (Act of Congress, the "Adamson Law," requiring that the then existing wage scale should continue in force pending a great public emergency; held constitutional on the ground that the interference with private rights was permitted only when a failure to agree on wages would jeopardize the nation's welfare *and then only as a temporary measure*

to meet a passing exigency, leaving the parties free to govern their relations by their own agreements after the specified time; and affirming the doctrine that, "as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is primarily private, the establishment and giving effect to such agreed on standard is *not subject to be controlled or prevented by public authority.*")

Bunting v. *Oregon,* 243 U. S. 426. (State law fixing hours of labor; held constitutional solely on the ground that it was an "hours of service" law in the interest of public health, and although some question of overtime pay was presented, the Court disclaimed any intention of holding that a wage fixing statute could be sustained.)

Adams v. *Tanner,* 244 U. S. 590. (State law affecting the fees to be charged by employment agencies; held unconstitutional on the same principles which govern the power to fix wages of employees.)

Adkins v. *Children's Hospital,* 261 U. S. 525. (Act of Congress, applying to the District of Columbia, authorizing the fixing of minimum wages for women in various employments in the District; held unconstitutional on the ground that it was a "wage fixing law, pure and simple," and thus violated the Fifth Amendment, although many of the businesses in which employment was regulated were businesses affected with a public interest, hotels, for example; and, after a review of all the leading authorities, that were cited against the contention that the law was invalid, stating that "in none of the statutes thus sustained was the liberty of employer or employee to *fix the amount* of wages the one was willing to pay and the other willing to receive interfered with.")

Wolff Co. v. *Industrial Court,* 262 U. S. 522. (Kansas statute creating a so-called "Industrial Court" for the purpose of providing compulsory arbitration between employers and employees in business affected with a

public interest, and as a result of such arbitration, fixing the wages of employees; held unconstitutional so far as wage fixing was concerned, on the authority, principally, of *Adkins* v. *Children's Hospital, supra,* and affirming the doctrine that "there is no authority of this Court to sustain such exercise of power in respect to those kinds of business affected with a public interest.")

Radice v. *New York,* 264 U. S. 292. (State law prohibiting employment of women in restaurants between the hours of 10 P. M. and 6 A. M.; held constitutional as a health measure; but affirming the doctrine of *Adkins* v. *Children's Hospital* that a wage fixing law would be unconstitutional.)

Murphy v. *Sardell,* 269 U. S. 530. (State law fixing directly minimum wages for women, and declaring the need of such law in the interests of public health and morals, held, in a memorandum opinion, unconstitutional, as violative of the Fourteenth Amendment on the authority of *Adkins* v. *Children's Hospital, supra,* which concerned the Fifth Amendment.

Tyson & Bro. v. *Banton,* 273 U. S. 418. (Certain sections of the New York Ticket Brokers Act declaring that the price for admission to theatres is a matter affected with a public interest, and forbidding resale of tickets by any broker at a price in excess of 50 cents above the price printed on the face of the ticket; held unconstitutional as violative of the Fourteenth Amendment, affirming the principle that price fixing for personal services, such as that of a broker, is not permissible as a general rule; that a declaration of the legislature that business affected with a public interest is not conclusive on the Court; that the admitted power to regulate in many other respects does not lead to the conclusion that regulation by price fixing may also be resorted to, as the exercise of police power generally may be quite distinct from the power to fix prices; and that the provision for fixing prices cannot be sustained merely as

a measure of preventing fraud or extortion, and the difficulty or even impossibility of dealing with evils in any other way constitutes no warrant for suppressing them by methods precluded by the Constitution.)

Ribnik v. *McBride*, 277 U. S. 350. (State law requiring a license of and regulating the conduct of employment agencies, including the fixing of prices to be charged for services rendered by such employment agencies; held unconstitutional as violative of the Fourteenth Amendment so far as the price fixing features were concerned; and affirming the doctrine that the common callings could not be said to be "devoted to a public use" or "clothed with a public interest" in the sense "which the law contemplates as the basis for legislative price control"; and affirming that the wages of the butcher, the baker, the wood chopper, and the miner could not be fixed by state regulation, and adding that there is "no reason for applying a different rule in the case of legislation controlling prices to be paid for *services*" rendered by the employment agency, the real estate broker, the ship broker, the ticket broker or the merchandise broker.)

V

Thus the chain of argument is complete; all the contentions put forward to sustain price fixing for personal services, according to the exigencies of the particular case (1) that it is no different from fixing "hours of service" which is justified as a measure to protect the public health, safety or morals; (2) that it is justified if connected with a business affected with a public interest; (3) that it is proper as a regulation of interstate commerce; (4) that the theory is limited to wage fixing for laborers and does not apply to price fixing for other personal services; (5) that the business of giving personal services in exchange for pay or commissions, may itself be "dedicated to the public use" or "clothed with

a public interest''—have been cleared away one by one, until the whole truth has emerged—that ordinary legislative price fixing for purely personal services is impossible under our Constitution—all the time, everywhere.

The ''liberty'' of the citizen, protected in the Bill of Rights, means the right to work for a living in the ordinary occupations and professions, not themselves forbidden as dangerous to the public health, safety, morals or welfare; this right, like all exercises of liberty, must of necessity be restricted as to time, place and circumstance so as to be enjoyed consistently with like measure of right of his fellows making up the body politic; but it cannot be valued by the State—no price may be set upon it, and called or treated as the legal equivalent; and so it cannot, like property, be taken, either wholly or partially, for use by the State, upon paying just compensation; for there is no yardstick to gauge either the title to the right, or its use, and the Bill of Rights never contemplated that there should be; only the individual, possessor of the right, may fix its worth, in his bargaining with his fellows having equal rights.

From these decisions therefore there may be deduced the proposition—indeed, for all practical purposes, the rule—which effectively disposes of the question of price-fixing for personal services in all instances and which reconciles the conclusions reached in all the cases on the subject and, it may be said, also the reasoning by which those conclusions are reached. This simple rule is that the legislative rate-making power extends to the use of property under certain circumstances and conditions—devotion to public use, securing just compensation, etc.; it does *not* extend to personal services at all (excluding, of course, fees for securing bounty from the government, work for the government itself, and stipulations as to fees and wages in government contracts). The solid ground for this rule is, we insist, to be found in the very nature of rights of property and

rights of labor, as we conceive of them in our form of government, and the differences between the two, recognized and sanctioned in the very nature of the constitutional guarantees extended to each.

This rule has never been denied by the result reached in any decision of this Court. On the other hand, it is supported in the reasoning of all the cases where a comprehensive discussion of the subject has occurred.

VI

The argument of the Court below, if it should remain as final authority, would stand alone as an attempt to answer this ready solution of the price-fixing problem. And that answer is made by deductions from a mythical example put forward by the Court as decisive of the question—deductions which are curiously fallacious. Stating that the rule we have suggested is "interesting —possibly embarrassing," the Court below cites this supposed analogy, which, in the opinion of the Court, settles the question (*Tagg Bros., etc.*, v. *United States*, 29 Fed. 2nd, 750, 752):

> "The flow of this commerce through the stockyards may be likened to the course of travel across a toll bridge and there is an analogy if you picture such a bridge equipped with a toll gate at both its ends. When the travelers go upon the bridge, the bridge owner lifts the toll bar and collects the tolls, but when they come to the other end there is a group of men who have an arrangement with the bridge owner to lift the other toll bar for a price. Would it not be absurd to say that the bridge owner's prices may be regulated, but that the others can get together and charge anything they please—that the travelers may be protected from extortion in getting on to the bridge but not when they come to getting off? Certainly if the bridge owner's business is affected with a public use, the business of those who con-

trol the means of getting off the bridge is so a fortiori."

With all due respect, we desire to point out that the confusion of thought here is apparent upon a slight analysis. Of course, the bridge tolls may be regulated wherever they may be demanded, whether at either end of the bridge or in the middle, because the bridge company has devoted its property to the public use and in return has received a franchise from the state authorizing it to collect tolls and so its tolls may be regulated whatever agency the bridge company may see fit to employ to receive the money. But it is always and only the bridge company—the company which has devoted its property to a public use and which has received a franchise from the state—whose charges are regulated whatever the means adopted for collection, whether by a group of men acting as their agents, or otherwise, and whether the toll is collected at the bridge or by ticket agents or a group of ticket agents in all sections of the country. On the other hand, the pay which the bridge company may give to these collectors cannot be fixed by law. If the bridge company sees fit to turn over to them all the tolls received, that is a matter of private contract between the bridge company and the toll collectors. So also are the employees of the travelers free from legislative price-fixing. If the traveler sees fit to employ a chauffeur particularly qualified to guide cars over this particular bridge, the wages of such chauffeur cannot be fixed on this ground, although he exacts a toll, as it were, for guiding the traveler across the bridge.

So an agent, who undertakes for the traveler to assort and grade the cars that go over the bridge and arrange, for pay or a commission, the bridge fare, is not subject to legislative price-control, because his work is connected with getting over a bridge belonging to a bridge com-

pany whose rates and charges may be fixed by law. Travelers may be protected from extortion for the use of property devoted to a public service—they cannot be protected (by price fixing) from "extortion" in those private contracts which they make for purely personal services and it is no function of the government so to protect them, unless we admit the legality of slavery. So much is fundamental in our government and no analogy or supposed necessity can destroy the principle, grounded as it is in our basic conception of individual rights and written into our organic law.

Thus it may be confidently affirmed that personal services are not subject to price-fixing by law unless, to use the language of this Court in a recent case, "there is to be a revolution in the relation of government to general business."

Applied to the commission men, who, for a charge, agreed to between them and owners of cattle desiring to sell the same, grade and sell the cattle, the operation of the rule is plain. They are merchandise brokers, selecting and selling on commission just as are real estate brokers, ship brokers, ticket brokers, etc., as to all of whom this Court has specifically applied the rule.

VII

It may be suggested that the force of this argument is destroyed by the decision of this Court in the matter of the statute now under consideration in *Stafford* v. *Wallace*, 258 U. S. 495. A consideration of the scope of that decision and the questions actually before the Court will show that this is not the case. The Stockyards Act had been newly passed. There were grave doubts as to its constitutionality. It was argued that stockyards were not common carriers, but were public markets, and as such the property of the stockyards was not a part of interstate commerce and, therefore, could not be thus regulated. Counsel for the Government facilitated the

case to test that question, and when the case came before the Court, the one question was whether the statute, as an entirety, and as a regulation of stockyards, was a regulation in interstate commerce. The attack made upon the statute by counsel for the petitioners was almost wholly restricted to the question whether stockyards as such were subject to governmental regulation. It is true that some portions of the Act were singled out as subject to attack, as, for example, that the provision as to disclosure by the stockyard company of its operations was an unreasonable search and seizure. These questions were, however, hardly referred to in the argument. On the contrary counsel for the Government expressly disclaimed any purpose to argue the administrative details of the Act, and suggested to the Court that if the statute as an entirety could be sustained, the question of the possible validity of any or all of its administrative details could be determined hereafter. This suggestion was followed by the Court, and Chief Justice Taft pointedly said as to the scope of his opinion:

> "The *only* question here is whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation."

He also said in his opinion:

> "Other objections are made to the Act and its provisions as violative of other limitations of the Constitution, but the only one seriously pressed was that based on the Commerce Clause and we do not deem it necessary to discuss the others."

These limitations of the decision in *Stafford* v. *Wallace* were not only natural, but inevitable, because the order

of the Secretary, which affected the rights of the petitioners, and thus presented the concrete case upon which alone any decision as to constitutionality could properly be based, was a proposed order, merely requiring the stockyard owners, market agencies and dealers to register, file schedules with the Secretary of Agriculture, and furnish certain reports. It did not fix prices or rates, and therefore the concrete case before the Court did not present the question now raised under the Fifth Amendment to the Constitution.

Both in the arguments for the appellants and the arguments for the Government, the fact that the single question of the power of Congress under the Commerce clause was presented was recognized. The argument of the appellants was as follows (Page 506):

> "The decision below rests upon the syllogism that 'the stockyards themselves are instrumentalities of interstate commerce' and the dealers in live stock at the yards are 'engaged in or participating in that commerce within the stockyards'; ergo, the dealers are engaged in interstate commerce and subject to the regulatory power of Congress. We submit that both premise and conclusion are wrong. The dealers are not engaged in 'commerce with the stockyards.'"

The argument for the Government was as follows (Page 509):

> "The question here is not whether the commission merchants and dealers should be included within the act by judicial interpretation, as in *Hopkins* v. *U. S.*, 171 U. S., 578, but whether Congress had the power to designate them and their transactions as a part of the 'current of commerce' and as such within the act. • • •
>
> "Moreover, the court will not attempt to pass on the reasonableness of the rules and regulations

> of the Secretary of Agriculture, or to define his powers by a construction of the act, in advance of a concrete case raising a specific issue, as held in *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S., 194, and *Texas* v. *Interstate Commerce Commission*, 258 U. S., 158."

The fact that this Court, in the *Stafford case*, did not intend to pass upon the question here involved, is demonstrated by the fact that it would otherwise have cited cases in its opinion upon this question. Nowhere in the opinion is there any reference to cases involving the fixing of prices or wages for services. On the other hand, all the cases cited relate to the power over interstate commerce.

There are abundant indications that the Supreme Court meant to confine itself, in the *Stafford case*, to the single question, whether the packers and stockyards act concerned businesses engaged in interstate commerce, or in intrastate commerce. This question of the jurisdiction of Congress to act at all in the premises under the Commerce Clause, was the primary question, and had to be decided before there could be any effective operation of any part of the Act. It went to the heart of the law, and, if decided adversely to the Government, no section could stand.

On the other hand, the validity of any particular regulation, as to whether it took property without due process of law, or otherwise violated the Fifth Amendment, can now be considered without either destroying the Act as a whole or other portions of it, and without rendering ineffectual the decision of this Court in the *Stafford case* as to the power of Congress to supervise these instrumentalities of commerce. We recognize that the Act as a whole is constitutional, but the Courts may declare one of its provisions, after it has been acted upon affirmatively and prejudicially by the Secretary, to be unconstitutional.

An exact analogy is found in the case of *Weller* v. *New York,* 268 U. S. 319, taken in connection with *Tyson & Brother* v. *Banton,* 273 U. S. 418, decided by the Supreme Court February 28, 1927. In the former case the Supreme Court held valid an Act of the New York legislature, requiring licenses of theatre ticket brokers and the charge before the Court was reselling theatre tickets without the license required by the Act. Subsequently, the same statute again came before the Court on the price fixing features, the action being one to enjoin prosecution for re-selling theatre tickets at a price greater than that permitted by the statute. Notwithstanding the previous decision in *Weller* v. *New York,* the Court held the price fixing provisions of the statute unconstitutional. In the case of the New York Brokers Law, there was the same provision found in the case at bar, to the effect that if any section of the law was held unconstitutional, such determination should not affect the validity of the remaining provisions.

The views of this Court on this subject were expressed in the recent case of *Weaver* v. *Palmer Bros. Co.,* 270 U. S. 402, where, speaking of a decision holding unconstitutional certain features of an act of Congress notwithstanding the same act had been held constitutional in general terms in an earlier case, it was said:

> "Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way. *Quong Wing* v. *Kirkendall, supra,* 64. This is well illustrated by the *Powell Case* compared with *Schollenberger* v. *Pensylvania,* 171 U. S. 1. Every opinion is to be read having regard to the facts of the case and the question actually decided. *Cohens* v. *Virginia,* 6 Wheat. 264, 399."

Another analogy is found in *Wolff Packing Co.* v. *Industrial Court,* 267 U. S. 552, taken in connection with the earlier case in 262 U. S. 522. The Court said:

"When the case was first before this Court the discussion at the bar and in the briefs chiefly related to the validity of the parts of the Act permitting the fixing of wages; and the opinion then delivered particularly dealt with that question, * * *

"Both parties rely on our decision when the case was first here. One insists that by reversing the original judgment of the state court, and not merely a part of it, we adjudged the invalidity of the entire Act; and the other that by particularly declaring the provisions permitting the fixing of wages invalid and saying nothing about the provisions permitting the fixing of hours of labor we impliedly held the latter valid. Both contentions are wrong. 'A judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided.' *Mutual Life Insurance Company* v. *Hill,* 193 U. S. 551, 553."

This language is particularly pertinent to the situation presented in the case at bar, not only on the position of the Court as to the limit of a decision on a constitutional question, but also on the propriety of referring to the briefs of counsel and the oral argument in determining the precise question that was decided in the former opinion of the Court.

The question presented in the *Stafford case* challenged the power to make any regulations of the stockyards, on the ground that the whole subject was not in the domain of interstate commerce, and therefore not within the jurisdiction of Congress. The contention here made does not contest the power of Congress to authorize regulations of packers, stockyards and market agencies, as a part of the regulation of interstate commerce. What it contests is the validity of a particular regulation as it affects individual rights. As expressed by Chief Justice Taft in the Kansas Industrial Court

cases (*Wolff Co.* v. *Industrial Court,* 262 U. S., 539), in a precisely similar situation:

> "To say that a business is clothed with a public interest is not to determine what regulation may be permissible in view of the private rights of the owner."

To say that the stockyard's business is interstate commerce, and thus may be regulated, does not imply that the government may make any regulation it sees fit with reference to that business. Each regulation must be subjected to the test of its consistency with the Bill of Rights and its validity as a true regulation of interstate commerce.

The question, therefore, is still open, whether Congress may, under the guise of a regulation of interstate commerce, fix or authorize the fixing of prices for the purely personal services of the market agencies or commission men in buying or selling cattle for others on commission.

Respectfully submitted,

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No. 45

In the Supreme Court of the United States

OCTOBER TERM, 1929

TAGG BROS. & MOORHEAD, RICHARD M. LAVERTY, ENGAGED IN BUSINESS UNDER THE NAME AND STYLE OF LAVERTY BROS.; WILL H. WOOD ET AL., ETC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, WILLIAM M. JARDINE, AS SECRETARY OF AGRICULTURE; JOHN G. SARGENT, ATTORNEY GENERAL, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA

BRIEF FOR THE APPELLEES

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 45

TAGG BROS. & MOORHEAD, RICHARD M. LAVERTY, Engaged in Business Under the Name and Style of Laverty Bros.; Will H. Wood et al., etc., et al., appellants

v.

THE UNITED STATES OF AMERICA, WILLIAM M. JARDINE, as Secretary of Agriculture; John G. Sargent, Attorney General, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA

BRIEF FOR THE APPELLEES

OPINION BELOW

The opinion of the United States District Court for the District of Nebraska (R. 164) is reported in 29 F. (2d) 750.

JURISDICTION

The judgment of the District Court was entered on December 31, 1928. (R. 181 erroneously states this date as December 1, 1928.) Petition for appeal

was filed January 2, 1929 (R. 840), and was allowed on the same day (R. 843).

Jurisdiction of the Court rests on Section 316 of the Packers and Stockyards Act, c. 64, 42 Stat. 159, 168 (U. S. C. Title 7, Sec. 217), making applicable to suits for injunction against orders of the Secretary of Agriculture the procedure provided in the Act of October 22, 1913, c. 32, 38 Stat., 208, 220 (U. S. C. Title 28, Sec. 47), for suits for injunction against orders of the Interstate Commerce Commission. The provisions as to this procedure are incorporated in Subsection 5, Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345). *Stafford* v. *Wallace,* 258 U. S. 495.

QUESTIONS PRESENTED

The questions presented are (1) whether the language of the Packers and Stockyards Act authorized the Secretary of Agriculture to issue his order dated November 19, 1926, fixing the maximum commission charges for buying or selling livestock on the Union Stockyards at Omaha, (2) whether the Act, if it authorized his order, violates to that extent the due process clause of the Fifth Amendment, and (3) whether the rates fixed by the Secretary in his order are not supported by any substantial evidence or are confiscatory.

STATUTE INVOLVED

Title III of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 163–167 (U. S. C. Title 7, Secs. 201 et seq.), provides in part as follows:

> SEC. 301. When used in this act—
>
> (a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;
>
> (b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock;
>
> (c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; * * *.
>
> * * * * * *
>
> SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish, upon reasonable request, without discrimination, reasonable stockyard services at such stockyard.
>
> SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

SEC. 306. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

* * * * *

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect;

and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing can not be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; * * *.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than $500 for each such offense, and not more than $25 for each day it continues, which shall accrue to the United States

and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on conviction be fined not more than $1,000, or imprisoned not more than one year, or both.

Sec. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of

stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

STATEMENT

Appellants are sixteen corporations, nineteen individually owned concerns, and twenty-three partnerships buying and selling livestock for the account of others on the Union Stockyards at Omaha, Nebraska, and registered as market agencies under the Packers and Stockyards Act. (R. 1–2, 53–57.) On January 16, 1926, they filed with the Packers and Stockyards Administration at Washington a schedule of commission charges, designated Tariff No. 2, effective January 26, 1926, cancelling the schedule of charges, designated Tariff No. 1, which had been in effect from September 1, 1923. (R. 10–19.) By an order dated January 25, 1926, the Secretary of Agriculture suspended the operation of Tariff No. 2 for a period of thirty days and notified the appellants of a hearing before an examiner of the Stockyards Administration upon the reasonableness and lawfulness of the rates and charges prescribed in said Tariff and of their right to appear and show cause why a further order in respect to said rates and charges should not be made by the Secretary "in conformity with the provisions of Title III of the Packers and Stockyards Act, 1921." (R. 20–23.) After the Secretary had sus-

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pended the operation of Tariff No. 2 a further period of thirty days (R. 25), the maximum period of suspension authorized by the Act, Tariff No. 2 went into effect.

At the hearing testimony was given by twelve representative commission men (R. 184, 209, 211, 215, 218, 220, 222, 275, 283, 295, 298, 305), six producers of livestock (R. 196, 199, 201, 252, 255, 267) and officers of their associations (R. 201, 226, 252, 267), a buyer for the packers (R. 190) and other buyers (R. 252, 304), traders who buy for a speculative profit on resale (R. 207, 273), the Secretary-Traffic Manager of the Omaha Live Stock Exchange (R. 202), the general manager of the Union Stockyards (R. 192), an editor of a market paper (R. 206), and others (R. 182, 184, 191). An audit for the calendar year 1925 of each of the fifty-nine Omaha commission firms then operating was introduced.[1] (R. 400–699.) The audit was made by fourteen auditors working under the direct supervision of the senior accountant of the Packers and Stockyards Administration. (R. 307, 320.) It showed for each firm the balance sheet at the beginning and end of 1925; the net operating income or loss for the year, with expenses subdivided under twenty or more headings; dividends paid and owners' and partners' withdrawals; the salary as shown on the books of each owner and each employee and the nature and length of his services; total selling

[1] One of the fifty-nine later merged with another and is not an appellant. (R. 1, 53–55, 725.)

commissions and total buying commissions, classified (1) as to species and (2) as to method of arrival and departure—i. e., "straight" railroad cars containing only one species, "mixed" railroad cars containing more than one species, "drive-ins" arriving on foot, "truck-ins" arriving by motor; and the volume per car and per head of livestock sold and bought, classified in the same way.

Appellants' counsel cross-examined witnesses. The only witness called by appellants was the Chief of the Division of Audits and Accounts of the Packers and Stockyards Administration. (R. 182, 254.) After the hearing before the examiner was concluded, appellants through their counsel appeared before the Secretary of Agriculture on October 25th and 26th, 1926, and were given full opportunity of oral argument. (R. 25.)

The evidence presented to the Secretary showed that the commission firms function exclusively as brokers in buying and selling. Their activity begins when the stock is delivered at the yards and put in pens assigned to them. They then sort it into steers, cows, fat cattle sold to packers, stocker and feeder cattle sold to country buyers, etc. After the stock has been watered and fed it is offered for sale. If it is a buyer's market, the buyer seeks the seller; if a seller's market, the seller seeks the buyer. After the stock is sold it is weighed and on the same day the purchaser is billed and remittance is made to the shipper. Freight, feed en route, yardage and feed in the yards, commission charges,

brand inspection, and other charges are deducted from the sales price. (R. 185–186.)

The evidence before the Secretary also showed that appellants were agreed that uniform commission charges are necessary. They function through the Omaha Live Stock Exchange, a voluntary non-profitable association, memberships being individually owned. (R. 381, 798.) The rules of the Exchange prohibit commission charges different from those prescribed by it. (R. 204.)

On November 19, 1926, the Secretary of Agriculture issued his "Conclusion and Order." (R. 23.) He found wide variation among the firms in the volume of business (R. 30), in owners' income therefrom (R. 31), and in the percentage of expenditure for business getting to gross commissions (R. 34). He found that comparison of actual book costs of doing business was valueless as a guide because a few firms operated entirely through employees, while the others operating partly or entirely through owners either set up drawing accounts as salary or did not set up any owner's salary. (R. 32.) He therefore determined the "normal and reasonable" selling cost per car and per head for cattle, hogs, and sheep, allocating expense directly to the three species where possible, and allocating overhead, advertising, etc., on the basis of gross income. (R. 32.) He stated (R. 28–29):

> Therefore, the present problem is approached with the thought that commission rates yielding a reasonable profit above the

normal cost of rendering the service are reasonable.

On the basis of the foregoing and of the entire record he found the rates of Tariff No. 2 "unjust, unreasonable, and discriminatory"; he determined "schedules of just and reasonable charges" and directed appellants not to publish, demand, or collect in excess thereof on and after January 1, 1927. (R. 38–42.)

Three of the appellants thereupon filed a bill in equity in the District Court to restrain enforcement of the Secretary's order, and the other appellants later filed their bill of additional parties. (R. 1, 53.) The court issued a temporary injunction and over the Government's objection referred the issues to a Master and ordered him to take additional testimony. (R. 43, 52.)

At the hearing before the Master appellants introduced numerous exhibits prepared by a firm of auditors employed by them. (R. 722, 726–728.) These exhibits and other evidence introduced by appellants were intended to show 1925 costs computed on various hypotheses and the commissions that appellants would have received if the Secretary's tariff had been applied to their 1925 business. The accuracy of the figures in the Government audit was not attacked.

The Master's report filed July 14, 1928, generally sustained the appellants' contentions. (R. 57.)

The judgment of the District Court, consisting of a circuit judge and two district judges, filed Decem-

ber 31, 1928, dismissed the petition and set aside the temporary injunction. (R. 181.)

SUMMARY OF ARGUMENT

I. The order of the Secretary of Agriculture fixing appellants' maximum commission charges is authorized by the Packers and Stockyards Act. Appellants are market agencies within the meaning of the Act. Subdivision (e) of Section 306 of the Act authorizes the Secretary, upon the filing by market agencies of a new rate schedule and after a hearing, to make "such order with reference thereto as would be proper in a proceeding initiated after it had become effective." Section 310 authorizes a proceeding by the Secretary with reference to existing charges of stockyard owners and market agencies. It provides that if the Secretary, after a hearing, is of the opinion that such charges are or will be unjust, unreasonable, or discriminatory, he may (a) determine and prescribe just and reasonable maximum charges, and (b) make an order that "such owner or operator" shall collect only the charges prescribed. Since the subject matter of the section is regulation of charges of stockyard owners and market agencies, the words in subdivision (b), "such owner," refer to stockyard owner, and the words "such * * * operator" refer to market agency.

Even if subdivision (b) of Section 310 does not include market agencies, the Secretary's determination and prescription of maximum reasonable

charges of market agencies authorized by subdivision (a) constitutes an "order" within the meaning of subdivision (e) of Section 306. Its express provisions are partially nullified if it is construed as not permitting any enforceable order to market agencies.

This interpretation is in harmony with the manifest intent and purpose of the Act to make regulation of charges for stockyard services complete and effective.

II. The authority conferred upon the Secretary of Agriculture to prescribe appellants' maximum commission charges does not violate the due process clause of the Fifth Amendment. *Stafford* v. *Wallace, supra,* held that supervision of commission men under the Packers and Stockyards Act was authorized by the Commerce Clause. The Court referred to exorbitant or unreasonable stockyard charges as an undue burden on commerce. In *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 34, the Court said that *Stafford* v. *Wallace* presented the question whether the Secretary of Agriculture could prevent the abuse of exorbitant charges by commission men.

Rate regulation of an industry affected with a public interest is appropriate, and therefore not a violation of due process. The commission business of appellants is affected with a public interest because of its vital importance to interstate commerce and its monopolistic character.

Prescription of appellants' maximum commission charges is not wage fixing, and the power to regulate rates is not destroyed because the capital employed is small, wages and salaries are the principal cost item, or much of the service is performed by owners.

III. The Packers and Stockyards Act parallels the Interstate Commerce Act. It has been held under the latter that the Court will not substitute its judgment for that of the Commission in the determination of reasonable rates, but that it will consider whether the decision of the Commission can be supported by the evidence or whether it is confiscatory. In this case the evidence in support of the Secretary's determination includes a detailed financial audit of each firm affected and extensive evidence covering the history and practical operation of the commission business. Substantial evidence supports his subsidiary findings as to reasonable operating cost.

It is well settled that the Court will not enjoin rates attacked as confiscatory before they have been put into operation unless a case for relief is clearly proved. *Aetna Insurance Company* v. *Hyde,* 275 U. S. 440, held that evidence of the effect of rates upon the aggregate business of an entire industry does not establish confiscation unless supplemented by proof that each concern affected was efficiently operated. In this case there is no convincing proof of reasonably efficient operation by any of appellants. In addition, the exhibits purporting to show the confiscatory effect of operation under the

Secretary's rate schedule are incomplete, speculative, and misleading.

ARGUMENT

I

THE ORDER OF THE SECRETARY OF AGRICULTURE IS AUTHORIZED BY THE PACKERS AND STOCKYARDS ACT

Appellants contend that the meaning of the "order" authorized by Section 306 of Title III of the Packers and Stockyards Act is to be found in Section 310 of said Title, that the only order authorized by Section 310 is found in subdivision (b), and that this subdivision does not authorize an order to market agencies. The conclusion is that even if the only lawful charges are those prescribed by the Secretary, the appellees should be enjoined from enforcing them or attempting to put them in operation.

Section 306, subdivision (a), requires every market agency to file with the Secretary schedules showing all charges for stockyard services. Under Section 301 appellants are market agencies and the term "stockyard services" includes buying or selling livestock at a stockyard on a commission basis.

Section 306, subdivision (e), provides that whenever any schedule showing a new charge is filed with the Secretary, he may upon his own initiative enter upon a hearing concerning its "lawfulness," may suspend it for thirty days, and

> * * * after full hearing, whether completed before or after the rate, charge, regu-

> lation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective.

The proposed change of rate or charge then goes into effect, if after a further suspension of thirty days the proceeding has not been concluded and an "order" made.

Section 305 declares unlawful any unjust, unreasonable, or discriminatory charge by a market agency for stockyard services.

Section 310 provides that whenever the Secretary after a hearing is of the opinion that any rate or charge of a "stockyard owner or market agency" in connection with the furnishing of stockyard services is or will be unjust, unreasonable, or discriminatory, he (a) may determine and prescribe what will be the just and reasonable maximum rate or charge to be thereafter observed "in such case," and (b) "may make an order that such owner or operator" shall cease from "such violation" to the extent found by the Secretary and shall not thereafter publish, demand, or collect any rate or charge in excess of that "so prescribed."

The subject matter of Section 310 is regulation of charges for stockyard services by a "stockyard owner or market agency." The first portion of the section states when the Secretary may act; subdivisions (a) and (b) state how he may act. The words in subdivision (b), "such owner or operator," must be considered in connection with the application of

the entire section. So read, "such owner" refers back to "stockyard owner" and "such * * * operator" refers back to "market agency."

Moreover, even if subdivision (b) had the limited meaning assigned to it by appellants, the Secretary's determination and prescription of just and reasonable maximum charges under subdivision (a) constitutes an order within the meaning of Section 306. Section 306, subdivision (e), authorizes "such order" with reference to the lawfulness of proposed new charges of market agencies "as would be proper in a proceeding initiated after it had become effective." The section thus authorizes an order. The kind of order authorized is determined by reference to Section 310. If subdivision (b) is inapplicable, subdivision (a) at least applies and provides for determination and prescription of just and reasonable maximum commission charges to be thereafter observed by market agencies. Any other construction means that no order as to charges of market agencies may be made under Section 306, although the section expressly provides for such an order.

Subdivisions (f), (g), and (h) of Section 306 provide machinery for enforcing orders made under subdivision (e). Subdivision (f) prohibits any market agency from carrying on business unless the charges for stockyard services have been filed "in accordance with this section and the orders of the Secretary made thereunder." Subdivisions (g) and (h) provide penalties in case any one "fails to com-

ply with the provisions of this section or of any regulation or order of the Secretary made thereunder." Since the Secretary's determination of just and reasonable charges of market agencies for stockyard services, including buying and selling at a stockyard on a commission basis, is an order authorized by subdivision (e) and is made fully enforceable by subdivisions (f), (g), and (h), appellants' claim for injunctive relief fails.

Appellants' construction of Title III of the Act is contrary to its intent and purpose. This Title regulates practices and charges at the stockyards affecting interstate commerce in livestock and, more particularly, practices and charges of stockyard owners and market agencies. It is expressly made enforceable against market agencies by suit for injunction (Section 315) and suit for penalties (Section 314). A construction which would leave the vital matter of commission charges free from enforceable regulation is inconsistent with the manifest intent to make regulation of stockyard services complete and effective.

The legislative history of the Act confirms this view. The report of the Committee (House Report 77, 67th Cong., First Session) on H. R. 6320 said of Title III as a whole (p. 10):

> The Secretary of Agriculture is given substantially the same jurisdiction over stockyard matters which the Interstate Commerce Commission has over railroads, including the power, after full hearing, to es-

tablish and enforce just and reasonable rates and charges for, and practices in connection with, the furnishing of stockyard services.

II

THE AUTHORITY CONFERRED BY THE PACKERS AND STOCKYARDS ACT TO PRESCRIBE MAXIMUM COMMISSION CHARGES FOR BUYING AND SELLING LIVESTOCK PASSING IN INTERSTATE COMMERCE THROUGH A PUBLIC STOCKYARD IS NOT CONTRARY TO THE FIFTH AMENDMENT

Stafford v. *Wallace*, 258 U. S. 495, involved the constitutionality of the Packers and Stockyards Act so far as it provided for supervision of the business of the commission men and of the livestock dealers in the great stockyards of the country. This case came before the Court on bills seeking to restrain enforcement of orders of the Secretary of Agriculture regulating the business of the commission men and of the dealers at the Chicago stockyards.

The Court held that activities of the commission men and dealers in the large stockyards regulated by the Act are a necessary incident of the stream of commerce from one part of the country to another and are, accordingly, subject to the regulatory power of Congress under the Commerce Clause. The Court said (p. 516):

> The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers.

In summarizing the evils which Congress sought to provide against by the Act, the Court called attention to the effect of unreasonable charges by commission men or other market agencies on interstate commerce as follows (p. 515):

> Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate.

In the case of the traders one of the assignments of error was that the Act violated the Fifth Amendment. (R. 28, No. 691, October Term, 1921.) While the Court's opinion states that the only constitutional objection seriously pressed was that based on the Commerce Clause, the power to regulate under the Commerce Clause was sustained because of the effect on interstate commerce of improper practices and unjust or unreasonable charges of market agencies. If, therefore, the power of Congress to regulate market agencies was grounded, in part at least, on the right to prevent unreasonable charges by such agencies, the decision in *Stafford* v. *Wallace* necessarily sustained the validity of the Secretary's power to regulate their charges.

This was the view of the District Court in this case. It said (R. 165):

> I think that the issues in the *Stafford case* presented for the court's consideration the

> question of the Secretary's power to fix the rates of the market agencies and that the language used in the opinion and the later opinion—*Board of Trade* v. *Olsen,* 262 U. S. 1, 34—indicates a conclusion reached by the supreme court in favor of the existence of the power of the Secretary.

In *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, the Court referred to *Stafford* v. *Wallace* as follows (p. 34):

> That case presented the question whether sales and purchases of cattle made in Chicago at the stockyards by commission men and dealers and traders under the rules of the stockyards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby.

Assuming, however, that *Stafford* v. *Wallace* upheld only the power of general supervision over market agencies and did not decide the validity of rate regulation, the question is whether this is an appropriate exercise of the regulatory power in view of the nature of the business, the features which touch the public, and the abuses reasonably to be feared. As said in *Wilson* v. *New,* 243 U. S. 332, with respect to the authority to regulate interstate commerce (p. 346):

> It is equally certain that where a particular subject is within such authority the extent of regulation depends on the nature and character of the subject and what is appropriate to its regulation.

The business of the commission men is one affected with a public interest. It serves all the public, it is essential to the movement of interstate commerce, and it has a monopolistic control over prices.

The commission men hold themselves out as serving all comers and by the terms of the Packers and Stockyards Act (Sec. 304) they are required to serve all without discrimination.

The commission men are essential in making the sales without which the flow of the current of commerce in livestock from the West to the East, and from one State to another, would be obstructed. Thousands of head arrive daily by train, motor, or on foot and must be promptly sold and moved out to make room for the next day's arrival. The shippers, who are ordinarily far away, are dependent on the commission men.

There is but one great public stockyard in Omaha, and appellants have a practical monopoly of the business. The only two independents operating in 1926, one of which was a cooperative, handled less than 7% of the volume of business in cars in that year. (R. 758.) Furthermore, appellants fix their charges by agreement among themselves and not as the result of competition. (*Supra*, p. 10).

In *Stafford* v. *Wallace, supra,* the Court, after discussing the close relationship of the market agencies to the movement of livestock in interstate commerce through the stockyards, said (p. 516):

> The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn* v. *Illinois,* 94 U. S. 113.

In *Tyson & Brother* v. *Banton,* 273 U. S. 418, 439–440, the Court cited the stockyards as an example of a business affected with a public interest.

Stockyards are the place where the producers dispose of their livestock. At Omaha the Stockyards Company furnishes the physical facilities and the commission men and other market agencies make the sales without which these physical facilities would be useless and inoperative. In short, the business of the stockyards which is affected with a public interest comprises that of the company which owns the yards and that of the commission men who function thereon in making the sales for which the yards are equipped and provided.

Businesses affected with a public interest have been divided into three classes, (1) those carried on

under the authority of a public grant, (2) those historically recognized as such, and (3) those which though not public at their inception have become such because of their peculiar relation to the public. As to the third class the Court in *Wolff Company* v. *Industrial Court,* 262 U. S. 522, said (p. 538):

> In nearly all the businesses included under the third head above, the thing which gave the public interest was the indispensable nature of the service and the exorbitant charges and arbitrary control to which the public might be subjected without regulation.

The business of the commission firms is squarely within this language. The indispensable nature of their service is not disputed and their monopolistic control over rates might, if unregulated, subject the public to exorbitant charges and arbitrary control.

Munn v. *Illinois,* 94 U. S. 113, the leading case upholding regulation of a business which has become public, turned upon these same features. In the *Sinking-Fund Cases,* 99 U. S. 700, the Court referred to the *Munn* case as follows (p. 747):

> The inquiry there was as to the extent of the police power in cases where the public interest is affected; and we held that when an employment or business becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort, and by means of which a

> tribute can be exacted from the community, it is subject to regulation by the legislative power.

That the State may regulate rates of a business affected with a public interest needs no citation. It is immaterial that such regulation involves interference with the right to contract (*German Alliance Insurance Company* v. *Kansas,* 233 U. S. 389) or interference with preexisting contract rights (*Sutter Butte Canal Company* v. *Railroad Commission,* 279 U. S. 125).

Two lines of cases are cited in support of the alleged unconstitutionality of the power to regulate the maximum charges of appellants—(1) those involving a statute fixing charges in businesses not affected with a public interest and (2) those involving what may be termed a wage-fixing statute.

Leading cases of the former type are *Tyson & Brother* v. *Banton, supra,* involving a statute limiting resale price of theatre tickets by ticket brokers; *Ribnik* v. *McBride,* 277 U. S. 350, involving a statute regulating charges of employment agencies; and *Williams* v. *Standard Oil Company,* 278 U. S. 235, involving a statute regulating the sales price of gasoline. In these cases the only basis for rate regulation was that the business was affected with a public interest, and when the Court made a contrary determination the rate regulation fell. They do not apply to this case where Congress under the Commerce Clause regulates a business affected with

a public interest and therefore one for which rate regulation is appropriate.

Analysis of cases involving a so-called wage-fixing statute shows that they do not apply to this case.

Adkins v. *Children's Hospital,* 261 U. S. 525, held unconstitutional a minimum wage law applying to women and minors. The Court cited as one kind of case where freedom of contract might be constitutionally abridged, "statutes fixing rates and charges to be exacted by businesses impressed with a public interest." (P. 546.) The Court said that the law under consideration did not deal "with any business charged with a public interest." (P. 554.) The case was disposed of on the basis that the police power of the State to regulate health and morals did not justify the statute.

In *Wolff Company* v. *Industrial Court, supra,* a meat packing company attacked a statute which provided that in case of a dispute as to wages between employer and employees in a plant manufacturing food for human consumption an agency of the State might fix wages, and thereafter the employer was compelled to pay such wages and the employees prohibited from striking against them. The Court said that the classification of the business as public was at best doubtful and that the theory and purpose of the statute was to compel continuity of employment. It therefore held that in so far as it permitted the fixing of wages in

the packing company's plant, it violated the due process clause.

Wilson v. *New, supra,* held that when Congress was confronted with a national emergency by reason of a threatened strike of railroad employees and the consequent possible stoppage of the country's transportation system, it could constitutionally fix the wages of railroad employees for a reasonable time to enable them to agree.

The regulation of maximum commission charges under the Packers and Stockyards Act is not wage-fixing either in form or in substance.

Under the Act the Secretary of Agriculture may determine charges for the brokerage *service* of selling livestock just as under the Interstate Commerce Act the Commission may determine charges for transportation service. In either case the service performed, the charge for which is regulated, requires the use of property and of personal services.

Appellants' argument erroneously assumes that their brokerage service does not involve the use of property, and that therefore regulation of its charges impinges directly on personal services. Appellants employ property, and very valuable property, in the conduct of their business. The yards of the Stockyards Company, its office building, its facilities for watering, feeding, and weighing livestock are all actively used. If the Stockyards Company itself conducted the commission

business, a return on the capital employed would be part of the cost of doing the commission business, and there would be no question of fixing wages. The power of the public to regulate is not lost because most of the property and facilities used in the business are leased, rather than owned, by those engaged in it. Some of the charges of the Stockyards Company are passed on directly to the shippers; the balance, including rent, are among the costs of doing business taken into consideration in determining reasonable charges.

The Secretary's order is not wage fixing because wages and salaries are the largest single item of expense. The Secretary's rates prescribe the maximum charges for a business carried on, like other businesses, through the use of property and the complementary services of numerous individuals. Within the limits of the charges thus fixed, just as prior thereto when all commission charges were uniform, efficient employees will compete with the inefficient and will be paid according to their worth, while efficient owners will compete with the inefficient and will receive a return in profits commensurate with their business capacity.

The Secretary's order is not wage fixing because much of the service is performed by owners. In determining the cost of doing business allowance must, of course, be made for owners' services, but this concerns the proper amount of maximum rates, not the power to determine them. If the feature of owners' services were determinative of the power

of rate regulation, then commission firms operating entirely through employees would be subject to regulation, while those operating partly or entirely through owners and performing precisely the same service would be free to dictate their charges.

III

THE MAXIMUM COMMISSION CHARGES FIXED BY THE SECRETARY OF AGRICULTURE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND THEY ARE NOT SHOWN TO BE CONFISCATORY

Title III of the Packers and Stockyards Act closely parallels the Interstate Commerce Act. Under the latter Act the Court has held that it will consider whether the Commission acted within its statutory power, whether its findings are supported by some substantial evidence, and whether the rates fixed are confiscatory, but that it will not consider whether upon the same facts it would reach precisely the same conclusion.

Interstate Commerce Commission v. *Union Pacific Railroad*, 222 U. S. 541, presented the question whether certain rates fixed by the Interstate Commerce Commission were reasonable. In sustaining the Commission and reversing the lower court, Mr. Justice Lamar, speaking for a unanimous court, said (p. 547):

> In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of

> the order, or whether, on like testimony, it would have made a similar ruling.

and further (pp. 547–548):

> Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

See also *Assigned Car Cases,* 274 U. S. 564, 580; *Seaboard Air Line Ry. Co.* v. *United States,* 254 U. S. 57, 62; *Interstate Commerce Commission* v. *Illinois Central Railroad,* 215 U. S. 452, 470.

In this case the Secretary's rate determination is supported by substantial evidence. In addition to the detailed financial audit of each of the firms affected by his order there was extensive evidence covering the history and practical operation of appellants' business.

Appellants contend, however, that the Secretary's subsidiary findings as to the normal cost of salesmanship and of business getting are so unreasonable and arbitrary that the Court should hold that his determination of maximum charges is not supported by adequate evidence. Since the test applied by the Secretary was a reasonable profit above "the normal cost of rendering the service" (R. 29), it is argued that any error in determining

the proper amount of any cost factor invalidates his determination of maximum charges.

Appellants' conclusion does not follow from their premise unless they also demonstrate both that the Secretary's finding as to the total normal cost of doing business is not supported by substantial evidence and that his allowance for reasonable profit does not provide a margin sufficient to cover any proved inadequacy in his finding as to total cost. Irrespective of these considerations, however, the Secretary's subsidiary findings as to the separate cost factors of the business are fully supported by the evidence.

The appellants attack the Secretary's finding as to the cost of salesmanship. He found that the fair market value per year of the services of a good salesman who had opportunity for the full exercise of his ability was $5,000 for cattle and sheep and $4,000 for hogs. (R. 34.) The following facts as to salaries of employee salesmen taken from the Government audit and recited in the Secretary's Conclusion and Order show that these findings represent approximately the maximum market value of salesmanship (R. 33–34):

> Only four of the 39 employee cattle salesmen received $5,000 or more; 16 of these 39 received less than $3,000. Of the 9 employee sheep salesmen only three received salaries of $5,000 or more; four of these 9 received less than $4,000 a year. Of the 25 employee hog salesmen only five received salaries of

more than $4,000; 15 of these 25 received less than $3,000 per year.

The Secretary's determination of per car cost of salesmanship is $5 for cattle and sheep and $3 for hogs. This assumes that a cattle or sheep salesman worth $5,000 per year could handle 1,000 cars a year and a hog salesman worth $4,000 per year could handle 1,333 cars per year.

There was evidence that a salesman could handle efficiently a larger volume per year. (R. 262, 266.) Although the Secretary assumed a larger volume than the average volume handled by salesmen in 1925, the correctness of his determination of per car cost of salesmanship depends upon a correct relationship between a salesman's worth and the volume which he could handle. In other words, the selling cost per car is the same if on a yearly basis a salesman worth $5,000 handles 1,000 cars, or a salesman worth $4,500 handles 900 cars, or a salesman worth $4,000 handles 800 cars. Since the Secretary adopted approximately the maximum market worth of salesmen, a fair determination of per car cost required him to adopt approximately maximum volume.

The complete adequacy of the Secretary's determination of selling cost is shown by the testimony before the Master of the manager of one of the large commission firms that he could get salesmen for $6,000 who would sell efficiently 3,000 cars per year; that if a salesman sold less than 3,000

cars per year, presumably his salary would be scaled off accordingly; that a salesman should not sell less than 3,000 cars a year on the basis of a $6,000 salary; and that he would expect a salesman to whom his firm paid a $6,000 salary to handle 3,000 cars a year. (R. 794–795, 798.) This testimony shows a per car cost for salesmanship of only $2 as against the Secretary's finding of $5 for cattle and sheep and $3 for hogs.

Appellants also contend that the Secretary's finding as to the normal cost of travel, entertainment, advertising, etc., on the basis of something more than 10% of the average gross commissions received in 1925 (R. 35), is contrary to the evidence because substantially less than the actual expenditures under this head in 1925 (Exhibit 104, R. 798).

There was testimony that commission firms, who do not compete with each other in prices, wastefully directed competitive effort toward business getting, both through soliciting business and through sending shippers market letters and a market paper (R. 234, 235, 245, 260, 265), whereas all market information reasonably required was available through the daily papers. (R. 243.) The rules of the Omaha Live Stock Exchange indicate that the commission business had been forced to contend with abuses in soliciting and in "services" for shippers. The rules limit the length, period and character of soliciting, requiring solicitors to register on departing from and on returning to Omaha (R.

390), and prohibit paying for shippers' telephone and telegraph messages (R. 391) or meals (R. 394). The Secretary's Conclusion and Order says with respect to advertising and soliciting (R. 35):

> a very substantial part of the expenditure does not result in bringing new business to the market, but in shifting consignments from one commission man to another, and * * * the stockyards company also undergoes expenditures for advertising, all of which * * * must ultimately be borne by the producers of livestock * * *.

Finally, appellants contend that the rates are confiscatory. In this connection the burden rests on them to establish a clear and convincing case.

Where rates are attacked as confiscatory before they have been put into operation, this Court has repeatedly said that it would act only if a case for relief has been clearly proved. If the evidence leaves the confiscatory character of the rates in doubt, the Court will not enjoin them.

In *San Diego Land Co.* v. *National City,* 174 U. S. 739, the Court said (p. 754):

> judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

In *Knoxville* v. *Water Co.*, 212 U. S. 1, the Court said (p. 16):

> If a company of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States.

In *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, Mr. Justice Butler, speaking for the Court, said (pp. 447–448):

> Jurisdiction of this Court to set aside state-made rates as confiscatory will be exercised only in clear cases. And the burden is on one seeking that relief to bring forward and satisfactorily prove the invalidating facts. *Chicago, &c. Ry. Co.* v. *Wellman*, 143 U. S. 339, 344–345; *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 441, 446; *Knoxville* v. *Water Co.* 212 U. S. 1, 8, 16; *The Minnesota Rate Cases*, 230 U. S. 352, 433, 452; *Brush Elec. Co.* v. *Galveston*, 262 U. S. 443, 446.

In the usual case involving confiscatory rates the test applied is a fair return upon the value of the property used in the business. In this case the Secretary allowed an adequate return on the property invested, compensation for reasonable operating expense, and a reasonable profit.

The Secretary allowed 50¢ a car as interest on the property investment. (R. 36.) Since 127,811.99 cars or their equivalent were handled in 1925 by fifty-seven firms (Exhibit 103, R. 798), $63,906 would be allowed on the basis of the 1925 business, although a 7% return on the actual book investment on December 31, 1925, of fifty-nine firms (R. 35), would be only $54,009.97, or a margin of over $9,896.03 allowed in the Secretary's order.

Appellants contend that the Secretary's order erroneously fails to provide for going-concern value. The leading case of *Des Moines Gas Co.* v. *Des Moines,* 238 U. S. 153, 165, refers to going-concern value as—

> the value which inheres in a plant where its business is established, as distinguished from one which has yet to establish its business.

And again—

> an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced.

The organization necessary to set a gas, waterworks, or electric-lighting plant in efficient operation is necessarily complex, and when completed, has definite value. The organization necessary to start a commission firm in efficient operation may be accomplished by hiring two or three experienced salesmen and any other necessary employees, such as a yardman and a bookkeeper. The nature of the commission business, therefore, raises no pre-

sumption that existing firms have a going concern value and proof of actual going value is totally lacking. One of the Master's findings of fact was that the record does not contain evidence from which going concern value could be accurately determined. (R. 109.) Good will, representing "that element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business," has no place in the fixing of valuation for the purpose of rate making of monopolistic public-service corporations. *Des Moines Gas Co.* v. *Des Moines, supra,* at pages 165 and 169.

Appellants also attack the validity of the Secretary's order on the ground that it does not take into account the alleged value of certain exchange memberships (Appellants' Exhibit 107, R. 798) not set up on appellants' books in 1925 and therefore not included in the Government audit. Although appellants at the time of the hearing before the Secretary were served with copies of the Government audit and had an opportunity to introduce evidence of items not on the books, they did not do so. Exhibit 107 was offered in evidence at the hearing before the Master. (R. 722.) The exhibit therefore can not be used to show that the Secretary's order is invalid as contrary to the evidence, but is relevant, if at all, only upon the issue of whether the Secretary's rates are confiscatory.

Exhibit 107 assumes a fair market value of $4,000 for an exchange seat. This value is based on the

following testimony of one of the accountants of the firm of auditors employed by appellants (R. 721):

> Exhibit 107 shows the details of all memberships, including those set up and those not set up, the parties to whom they were issued, and their value on the basis of $4,000 per membership which was a fair value for 1925.

The testimony of this witness (R. 715–726) does not show his competency to determine the fair market value of exchange seats or what factors he considered in arriving at his determination of value. Appellants' witnesses did not attempt to reconcile this $4,000 valuation with the average book value of those memberships which were on the books. Exhibit 107 shows 73 such memberships with a total book value of $152,020 (firm No. 31 omitted because records not available), or an average book value of about $2,080.

It is submitted that the evidence in the record falls far short of the clear and convincing proof required if a $4,000 valuation of exchange seats is to be made the foundation for a finding of confiscatory rates.

Even if the Court should accept appellants' claim to a total additional investment of $312,000 in exchange memberships, seven per cent of this amount is $21,840. Against this must be offset the excess interest of more than $9,896.03 allowed in the Secretary's order (*supra*, p. 36), leaving less than $12,000 cost, or about 9¢ a car on the basis of

1925 business, deductible from the margin of profit allowed in the Secretary's order.

Appellants further contend that the Secretary's schedule omits basic cost items essential to the formation of a valid rate basis, namely, depreciation, bad debts, and supervision. Appellants do not show, however, that these items were not included in the Secretary's allowance for overhead. (R. 35.)

Appellants' Exhibit 106 (R. 798), offered in evidence at the hearing before the Master (R. 722), computes 1925 depreciation of $6,194.92 not set up on the books in 1925 and not included in the Government audit. This is less than 5¢ a car on the basis of 1925 business.

Appellants have not denied that the commission business is on a cash basis, but refer (page 31 of brief) to the testimony of a witness that bad debts are an occasional source of loss necessarily incident to the business. No evidence was offered to show that any 1925 bad debts disallowed as operating expense in the Government audit arose as a necessary incident to the commission business. The loans which some commission men made to shippers prior to 1925 were not a part of the commission business, and bad debts resulting from such loans were properly disregarded in the Government audit.

The profit which the Secretary allowed over his normal cost of rendering the service was fully compensatory. The following summarizes his determination of normal cost per car and of maximum

selling commissions per car, and the resulting net profit per car, the figures reflecting straight cars, single ownership, single decks of cattle and hogs, and double decks of sheep (R. 35, 38–39):

	Cattle	Hogs	Sheep	Total, all species
Commissions	$15.00	$12.00	$18.00	$45.00
Cost	13.25	9.85	13.05	36.15
Profit	1.75	2.15	4.95	8.85

By way of illustration, for one car of each species the total commissions would be $45 and the total profit therefrom $8.85, or a ratio of profit to commission of 19⅔%. While none of the appellants handles exactly the same number of cars of each species, practically all of them do handle all three species. The ratio of profit to commissions in the case of any single firm during any stated period will vary with the relative number of cars of each species handled; if an equal number of each, the ratio of profits to commissions will be 19⅔%; if more of sheep than hogs or cattle, the ratio will be still higher; if more of cattle than of hogs or sheep, the ratio will be lower but always above the ratio of profit to commissions on cattle alone. There is thus a variable spread between the Secretary's rates and his determination of cost which will absorb any minor cost items not brought to his attention. The court below said (R. 176):

> It is hardly to be imagined that every possible cost of every one of the fifty-nine dif-

ferent concerns examined by the Secretary would be specifically referred to and covered in such an order as made by the Secretary. But where, as in this case, the rate maker has provided a margin and spread for such contingencies the courts must keep hands off until there has been practical application.

Appellants' contention that the Secretary's rates are confiscatory is based primarily on Exhibits 103, 104, and 105. (R. 798.)

Exhibit 103 shows the commissions under the Secretary's order applied to the 1925 business.

Exhibit 104 computes total 1925 operating cost by taking actual cost as shown by the Government audit, adding thereto additional rent, interest at 7% on the 1925 property investment shown by the books, and $5,000 per year for owners acting as cattle or sheep salesmen and $4,000 per year for owners acting as hog salesmen. The book salaries of such owners are eliminated. (R. 718–719.)

Exhibit 105 compares commission income shown in Exhibit 103 with total operating cost shown in Exhibit 104.

This Court recently passed upon an attack *en masse* by an entire industry on rates alleged to be confiscatory. *Aetna Insurance Company* v. *Hyde, supra,* involved a statute of Missouri authorizing the superintendent of insurance under certain conditions to reduce the rates of fire insurance companies doing business in the State so that there aggregate collections in the State should not yield more

than a reasonable profit. The Superintendent of Insurance having reduced rates 10%, all the companies affected brought a proceeding to review his order on the ground that it violated the due process clause.

This Court held that no Federal question was presented. It said that the case as presented in the pleadings did not show that the reduced rates were confiscatory as to any company. The Court wholly rejected as evidence of confiscation the effect of the rates on the aggregate business of all the companies, holding that this evidence did not show confiscation unless coupled with proof that all the companies operated efficiently. It said (p. 448):

> And it fails to show that the business in Missouri of each is so well and economically organized and carried on that petitioners are entitled, as of right protected by the Constitution, to have premiums amounting in the aggregate enough to yield a reasonable return or profit to all the companies.

It also said (p. 447):

> It has never been and can not reasonably be held that state-made rates violate the Fourteenth Amendment merely because the aggregate collections are not sufficient to yield a reasonable profit or just compensation to all companies that happen to be engaged in the affected business.

It follows that a case of confiscation can not be built up from totals in Exhibits 103, 104, and 105 which reflect results for the entire industry. And

even assuming that the results therein shown for individual firms are correct, there is not the further necessary proof that any of them are "so well and economically organized and carried on" that they can invoke the protection of the due process clause. Mere general statements by certain owners that all expenditure was necessary and reasonable, and that management was efficient, are not sufficient.

The evidence of large aggregate expenditure and variation in expenditure for business getting, having little economic value, overcomes any possible presumption that might otherwise exist that all actual expenses were reasonable and justified.

Finally, Exhibits 103, 104, and 105 are incomplete, speculative, and misleading.

The fourth column of Exhibit 103 shows the commissions under the Secretary's order applied to the 1925 business if dealers and speculators were charged only one-half commissions, as had been the previous practice. Certain commission men expressed the opinion that many traders and speculators could not operate if charged full commissions and two speculators testified that they would go out of business if charged full commissions. From this evidence the conclusion is drawn that as a matter of business necessity appellants would not charge traders and speculators the full commissions allowed in the Secretary's order. The evidence and the conclusion are highly speculative. The

fourth column of Exhibit 103 and computations based thereon must therefore be rejected.

Exhibit 103 does not include operating income other than commissions, whereas the commission income shown in Exhibit 103 is compared in Exhibit 105 with all operating expense.

Exhibit 104 includes all expense for business getting, whether justified or not. It also assigns to all owner salesmen approximately the maximum salaries of salesmen. In these two important respects it is misleading.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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CHARLES H. WESTON,
Special Assistants to the Attorney General.

OCTOBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

SUPREME COURT OF THE UNITED STATES.

No. 45.—October Term, 1929.

Tagg Bros. & Moorhead et al., Appellants, *vs.* United States et al.	Appeal from the District Court of the United States for the District of Nebraska.

[February 24, 1930.]

Mr. Justice Brandeis delivered the opinion of the Court.

The Packers and Stockyards Act, August 15, 1921, c. 64, §§ 301-316, 42 Stat. 159, 163-168; U. S. C., Tit. 7, §§ 201-217, declares that persons engaged in the business of buying or selling in interstate commerce livestock at a stockyard on a commission basis are "market agencies"; requires such agencies to furnish their services upon reasonable request, without discrimination and at reasoable rates; and confers upon the Secretary of Agriculture the power to determine what are the just and reasonable rates or charges for their services. The Secretary prescribed a tariff of maximum charges for such services at the Omaha Stockyards, effective January 1, 1927. This suit was brought in the federal court for Nebraska, under § 316, to enjoin the enforcement of that order and to set it aside. Fifty-eight concerns, all registered under the Act as such market agencies, and together comprising the entire membership of the Omaha Livestock Exchange, joined as plaintiffs. The United States, the Secretary of Agriculture, the Attorney General and the United States Attorney for Nebraska were made defendants. The prayers were that the order be declared null and void and that the defendants be enjoined from enforcing it by canceling the registration of the agencies, or by instituting proceedings to enforce the penalties prescribed by the Act for violation of an order, or by other means. There were also prayers for a restraining order and for an interlocutory injunction. Compare *Stafford* v. *Wallace*, 258 U. S. 495.

The occasion for the Secretary's order was this. There is no competition among the Omaha market agencies as to rates, since

the Exchange rules require all members to make the same charges for their services. As required by § 306 of the Packers and Stockyards Act, the Omaha market agencies had filed with the Packers and Stockyards Administration at Washington a schedule of charges known as Omaha Livestock Exchange Tariff No. 1. On January 16, 1926, they filed a new schedule, known as Tariff No. 2, which introduced higher rates to become effective January 26, 1926. The Secretary of Agriculture, acting on his own motion, issued, on January 25, an order suspending the operation of the proposed schedule; and gave to the market agencies and others concerned notice of public hearings to be held before an examiner of the Packers and Stockyards Administration, under Title III of the Act, to inquire into the reasonableness of the new schedule.[1]

The hearings before the Examiner extended over many months. The market agencies participated through counsel, but introduced little evidence. The Government introduced much. The evidence before the Secretary occupies, in condensed form, 532 pages of the printed record. It consists of the testimony of 33 witnesses and 102 exhibits, including 59 special audits of the books of the several plaintiffs. Upon that record and the report of the Examiner, the case was argued orally by counsel before the Secretary. He made a report which occupies 20 pages of the printed record. His order was based on the findings therein contained.

The application for an interlocutory injunction was made before three judges, pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219-20, U. S. C., Tit. 28, § 47, which, by § 316 of the Packers and Stockyards Act, are made applicable to proceedings brought to restrain or annul orders of the Secretary. *Stafford* v. *Wallace*, 258 U. S. 495, 512. At that hearing, the Government consented that the interlocutory injunction should issue. Upon the filing of the answer, a special master was appointed by the three judges to hear the evidence and report his conclusions to the court. The master admitted, in addition to the record before the Secretary, oral evidence which, in condensed form, occupies 84 pages of the printed record, and 24 elaborate exhibits. Relying in part on this new evidence, he recommended that the injunction be made permanent. The case was then heard

[1]As the Secretary's power to suspend a tariff pending a hearing is limited by § 306 to a period of sixty days, Tariff No. 2 became operative on March 27, 1926.

by the three judges on final hearing, upon exceptions to the master's report and a motion to confirm. That court also held the additional evidence admissible. After considering it in connection with that which had been introduced before the Secretary, the court found for the defendants and entered a final decree dissolving the interlocutory injunction and dismissing the bill. 29 F. (2d) 750. The District Judge allowed an appeal to this Court under § 238 (4) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, U. S. C., Tit. 28, § 345 (4).[2]

The plaintiffs conceded below that, being engaged in interstate commerce at public stockyards, they are subject to some regulation by Congress. But they claimed that the order is void, in whole or in part, on five grounds. That the Act does not purport to confer upon the Secretary power to issue an order prescribing commission charges for market agencies and directing their observance in the future. That, if the Act be construed as conferring such authority, it exceeds the constitutional power of the Federal Government, because it is not a regulation of commerce, and violates the Fifth Amendment, because the charges to be fixed are those for personal services. That so much of the order as reduces the charges below those of Tariff No. 1 is void, because it was outside the scope of the Secretary's inquiry as defined in the notice given by him. That the evidence presented to the Secretary was not sufficient to establish that the charges contained in either Tariff No. 1 or Tariff No. 2 were unreasonable or discriminatory; or that the schedule prescribed by the Secretary would adequately compensate the market agencies for their services and disbursements. That the rates in force prior to the hearing were not excessive, unreasonable or discriminatory; and that the charges prescribed by the Secretary are unreasonable and confiscatory.

In this Court twenty-seven specific errors are assigned, although some were not pressed in argument. One assignment attacks the construction given to the Act. One attacks its consti-

[2]In doing so, he also approved an appeal bond to operate as a supersedeas and granted a temporary injunction pending the appeal. This part of the order, being beyond the power of a single judge, was later vacated by him. Cumberland Telephone & Telegraph Co. *v.* Louisiana Public Service Commission, 260 U. S. 212. An application for a stay made to the three judges was denied on February 11, 1929. It was not until then that the rates which had been prescribed by the Secretary on November 19, 1926 became operative.

tutionality insofar as it purports to authorize the Secretary to fix plaintiffs' commission charges. Fifteen assignments attack the findings of the Secretary on the grounds that the evidence before him was not sufficient to sustain them, or that he erred in making specific findings, or that he erred in ruling on the admissibility of evidence and on the effect given to evidence, or that he erred in his processes of reasoning. Seven relate to the lower court's treatment of the additional evidence introduced before the master. One assignment attacks the legality of the order, insofar as it reduces the charges below those of Tariff No. 1, on the ground that it was beyond the scope of the inquiry. One attacks the order on the ground that it is confessedly confiscatory as to some of the plaintiffs and cannot be sustained except by fixing the number of plaintiffs entitled to carry on the business, or by eliminating some plaintiffs for the purpose of increasing the compensation of those remaining. And one assignment attacks the order on the ground that it is confiscatory as to all the plaintiffs.

First. The contention that Congress did not purport to empower the Secretary to issue an order prescribing the charges of market agencies is without substance. The language used was apt to confer the power. The Committee of the House declared in terms that it did so, when it reported the bill.[3] The executive department charged with the duty of enforcing the Act so interpreted it. This Court assumed in *Stafford* v. *Wallace,* 258 U. S. 495, 514 and *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 34, that the power had been conferred. The *Maximum Rate Cases,* 162 U. S. 184, 167 U. S. 479, 168 U. S. 144, upon which appellants rely, lend no support to their contention.

The order here in question resulted from a proceeding begun under Title III, Section 306. Subdivision (a) of that section requires the agencies to file with the Secretary their schedules of rates. Subdivision (e) authorizes the Secretary, upon complaint or

[3]Report No. 77, 67th Congress, First Session, on H. R. 6320, states at p. 10, referring to Title III: "... the Secretary of Agriculture is given substantially the same jurisdiction over stockyard matters which the Interstate Commerce Commission has over railroads, including the power, after full hearing, to establish and enforce just and reasonable rates and charges for, and practices in connection with, the furnishing of stockyard services." By the definitions contained in § 301 (b) and (c), the term "stockyard services" includes the services rendered by the plaintiffs.

on his own motion, to suspend a new rate pending a hearing as to its lawfulness; and, after the hearing, to make such order with reference thereto as would be proper in a proceeding initiated after the rate had become effective. Subdivision (g) makes any agency which fails to comply with any order made under this section liable to a penalty recoverable in a civil action; and subdivision (h) provides for a fine and imprisonment in cases of wilful violation.

Section 310 of the same Title provides that whenever, after a full hearing, the Secretary is of opinion that any rate "of a stockyard owner or market agency" is unreasonable, he may (a) fix the charge to be thereafter observed and (b) make an order that "such owner or operator" shall not thereafter "collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed". Plaintiffs urge that subdivision (a) confers only the power to declare what rates shall be reasonable, and that this declaration is effective only for purposes of reparation, as *prima facie* proof of such claims; that the power to compel observance of such rates in the future by enforcement of the penalties provided in § 314 is granted solely in subdivision (b); that this subdivision applies only to owners or operators of stockyards—not to all market agencies; and that, therefore, they are entitled to an injunction against the enforcement of the penalties, even though such an injunction would not finally dispose of this litigation.

The argument is highly strained. There is nothing in § 310, or elsewhere in the Act, evidencing a purpose to exclude market agencies from subdivision (b), and to restrict the power of regulation to but a part of the "stockyard services." The term "operator" in § 310 (b) is an apt designation of one who conducts a market agency at a stockyard. An operator of a stockyard is covered by the word "owner" under the express definition in § 301 (a).

Second. The contention that the Act, if construed as authorizing the order assailed, is void under the due process clause, is likewise unsound. It rests upon the fact that the services for which the Secretary's order fixes the charges are practically the personal services of brokers. Some of the market agencies are corporations; some, partnerships; some are individually owned. The capital needed in the conduct of their business is small. It is said that the business is wholly one of skill and labor, and that the commission man's only implements of trade are a horse on which he rides in the stockyards and a desk on which he keeps his accounts. The

Union Stockyards are owned by a separate corporation in which the plaintiffs have no interest and which has no interest in the commissions charged by them. But each agency occupies a certain space in the yards and Exchange building, for which an annual or monthly rental is paid. When a producer wishes to sell his live stock on the Exchange, he ships it by rail or motor truck, or drives it on foot, to an agency at the stockyards. After the stock is unloaded, it is driven by the agency to its pens, sorted, watered, fed and offered by it for sale. The feed is provided by the stockyards corporation on order of the agency and a separate charge is made therefor by the corporation. When a purchaser is found, the stock is driven to the yard scales and weighed. Responsibility passes to the purchaser, or to the agency acting for him, as the stock is taken off the scales. Shipments are generally sold on the day of delivery and payments are made on the same day or the next morning. The agency remits the proceeds to the shippers at once, after deducting its commissions, freight, yardage, feed, inspection and other charges.

The argument is that to prescribe a common maximum of earning power for commission men, who differ between themselves in the length of their experience, their relative aptitude for the work and their individual industry, is to penalize the skillful for the benefit of the unskillful; that in legislative price-fixing there are vital distinctions, from the constitutional standpoint, between property and the use of property, on the one hand, and personal services, on the other; that property originates with the state and reverts to the state, whereas, liberty—freedom to contract as to personal services—is a pre-requisite to the very organization of a government of the people; that it is impossible to ascertain what is a fair return for personal services because liberty, unlike property, has no actual or theoretical equivalent in money; that while property may be taken for a public use upon payment of just compensation, liberty—personal services—may not be so taken except in time of war or as a punishment for crime; that, since personal services can not be taken for a public use, they cannot be said to be dedicated to a public use or devoted to a public service; that this rate-fixing is in essence wage-fixing, since the stockyard services performed by the plaintiffs involve only skill and labor, and that wage-fixing was held to be beyond the power of Congress, *Adkins* v. *Children's Hospital*, 261 U. S. 525; that, even if not obnoxious as

an attempt at wage-fixing, the limitation of charges for personal service is precluded by *Tyson & Bro.* v. *Banton*, 273 U. S. 418 and *Ribnik* v. *McBride*, 277 U. S. 350.

It is true that performance of the specific work done by the plaintiffs does not require them to invest extensive capital. But it is essential that they employ the valuable property of the stockyards corporation, for which a charge is ultimately made to the shipper or buyer. The mere division of the stockyard services between the stockyards corporation and the market agencies does not deprive Congress of a power of regulation which it otherwise would have had. But the constitutionality of the power conferred does not rest upon so narrow a ground. There is nothing in the nature of monopolistic personal services which makes it impossible to fix reasonable charges to be made therefor; and there is nothing in the Constitution which limits the Government's power of regulation to businesses which employ substantial capital. This Court did not hold in *Tyson & Bro.* v. *Banton* and *Ribnik* v. *McBride* that charges for personal services cannot be regulated. The question upon which this Court divided in those cases was whether the services there sought to be regulated were then affected with a public interest. Whether a business is of that class depends, not upon the amount of capital it employs, but upon the character of the service which those who are conducting it engage to render.

Plaintiffs perform an indispensable service in the interstate commerce in live stock. They enjoy a substantial monopoly at the Omaha Stock Yards. They had eliminated rate competition and had substituted therefor rates fixed by agreement among themselves, without consulting the shippers and others who pay the rates. They had bound themselves to maintain uniform charges regardless of the differences in experience, skill and industry. The purpose of the regulation attacked is to prevent their service from thus becoming an undue burden upon, and obstruction of, that commerce. *Stafford* v. *Wallace*, 258 U. S. 495, 515, 516; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 34. There is here no attempt to fix anyone's wages or to limit anyone's net income. Differences in skill, industry and experience will continue to be factors in the earning power of the several plaintiffs. For, the order fixes only the charges to be made in individual transactions.

Third. The claim that the order is void for lack of proper notice, insofar as it reduces charges below Tariff No. 1, is unsupported.

The contention is that the notice of the hearings before the Examiner and the Secretary did not apprise plaintiffs of the Secretary's intention to fix a new schedule, but led them to believe that the hearings would be confined to the inquiry whether Tariff No. 2 was excessive and that, if it was found to be so, Tariff No. 1 would be left in force; whereas the tariff prescribed by the Secretary carries rates lower than Tariff No. 1. The notice given by the Secretary was neither defective nor misleading. It informed the plaintiffs that a hearing would be had under Title III of the Act. It apprised them that they would have "the right to appear and show cause why a further order in respect to the said schedule of rates and charges should not be made" pursuant to Title III. Section 306 (e) of that title provides that upon such a hearing the Secretary may make any order with reference to the proposed schedule which he could make in a proceeding initiated after the schedule had become effective. And § 310 of the same title expressly empowers the Secretary in any such proceeding, to fix the just and reasonable rate to be charged in the future, without limiting him to a determination of the lawfulness of a proposed rate. The plaintiffs should have anticipated, therefore, that the Secretary would fix a new rate, if the evidence before him would lead him to believe that such a course was proper and desirable.

Fourth. The claim that the order is void because unsustained by the evidence before the Secretary, or because of specific errors in rulings or findings, lacks merit. The Secretary found that monopolistic power was exercised by the plaintiffs without the usually attendant economy of minimizing expenditures for business getting; that the operating costs of the several agencies for the performance of similar services varied widely; that some of the expenses were wasteful and unnecessary; that the profit yielded by Tariff No. 2, on the basis of the estimated reasonable cost of conducting the business, allowing for reasonable salary expenses, advertising costs, overhead, Exchange assessments and dues and interest at the rate of 7 per cent on the invested capital, was unreasonable; that the Tariff was unduly complicated and confusing, not only to shippers but even to experienced employees of the agencies; that, because of the presence of maximum and minimum charges, and because of differences in rates based on the mode of delivery of the stock, its effect on different shippers was unjust, inequitable and not based on any reasonable differences in the cost

or value of the service performed; that it unjustly favored traders and speculators by prescribing half the regular commission charges for buying and selling for their account; that, for these reasons, the operation of Tariff No. 2 should be suspended and there should be substituted the schedule drawn by the Secretary which prescribed generally lower charges, eliminated the several unjust discriminations and yielded a reasonable return to the plaintiffs above the legitimate cost of their service.

It is urged that there was not sufficient evidence before the Secretary to establish that the charges contained in either Tariff No. 1 or Tariff No. 2 were discriminatory or unreasonable, or that the schedule prescribed by the Secretary would adequately compensate the market agencies for their services and disbursements; that the Secretary confined the fixing of rates to Omaha, although relatively higher rates prevail under substantially similar circumstances in other markets and it was possible to fix rates for all competing markets; that his order is based upon the notion that the industry is suffering from an oversupply of market agencies and that some of the plaintiffs should be eliminated therefrom; that it is based upon irrelevant considerations of the economic condition of plaintiffs' patrons; that it resulted from a complete misunderstanding of the plaintiff's function and a disregard of the really controlling facts of the industry; that the prescribed rates are based upon an assumed cost of the service which disallowed expenses actually incurred and omitted basic cost items such as some additional depreciation, bad debts, supervision, going concern value and additional items of invested capital; and that the revenues estimated to result from the recommended increase of the charges to traders and speculators will not be realized, because the increase will drive the traders and speculators from the market.

We find in the evidence before the Secretary ample support for the findings and the conclusion reached by him. It may be that some of the evidence was irrelevant or of little weight, and that some of the reasoning was not persuasive. But mere admission by an administrative tribunal of matters which, under the rules of evidence applicable to judicial proceedings, would be deemed incompetent, or mere error in reasoning upon evidence adduced, does not invalidate an order made by it. *United States* v. *Abilene & Southern Ry.*, 265 U. S. 274, 288; *Northern Pacific Ry. Co.* v. *De-*

partment of Public Works, 268 U. S. 39, 44. It has been settled in cases arising under the Interstate Commerce Act that if an order rests upon an erroneous rule of law, *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42; or is based upon a finding made without evidence, *Chicago Junction Case,* 264 U. S. 258, 263; or upon evidence which clearly does not support it, *Interstate Commerce Commission* v. *Union Pacific R. R. Co.,* 222 U. S. 541, 547; *New England Divisions Case,* 261 U. S. 184, 203; *Colorado* v. *United States,* 271 U. S. 153, 166, the order must be set aside. These rules are applicable also to suits arising under the Packers and Stockyards Act. But the order here assailed is not subject to any of these infirmities.

Fifth. With regard to the assignments of error based on the additional evidence introduced below, a question of practice requires consideration. After the defendants filed their answer, the plaintiffs moved for the appointment of a special master. The only grounds set forth in the motion were these: that the character and volume of the evidence before the Secretary was such that it would require for its due consideration long study and the aid of expert accountants; that it was necessary to take additional testimony from a large number of shippers to the Omaha market to show that the charges under Tariff No. 2 were satisfactory to shippers and that the charges prescribed by the Secretary would result in injury to the live stock business, by deteriorating the quality of the service; that it was necessary to introduce additional testimony and additional audits to show the effect of the rates prescribed by the Secretary on the business of the year 1926 and their continuing effect on the business of 1927; and that it was necessary to take additional testimony from a large number of the plaintiffs to show that under the application of the rates prescribed by the Secretary, they will be unable to continue in business.

The court granted the motion to appoint the master and authorized him "to rule upon the admission and exclusion of evidence, subject to the court's review of the same." In its opinion on final decree, the court justified the admission of the evidence, and considered the same, on the ground that the notice of the hearings before the Examiner did not advise plaintiffs that the Secretary intended to fix a new schedule of rates. As we have shown above, the court erred in holding that the notice given was inadequate.

But, if there had been a failure to give due notice, it would have been ground only for setting aside the order without inquiry into its merits, as having been made without notice and hearing. Such failure does not justify trying in the court, upon new evidence, the issues set forth in the motion to appoint the master.

A proceeding under § 316 of the Packers and Stockyards Act is a judicial review, not a trial *de novo*. The validity of an order of the Secretary, like that of an order of the Interstate Commerce Commission, must be determined upon the record of the proceedings before him,—save as there may be an exception of issues presenting claims of constitutional right, a matter which need not be considered or decided now. *Louisville & Nashville R. R. Co.* v. *United States*, 245 U. S. 463, 466; compare *Liscio* v. *Campbell*, 34 F. (2d) 646, 647; and see *Prendergast* v. *New York Telephone Co.*, 262 U. S. 43, 50 and *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289. On all other issues his findings must be accepted by the court as conclusive, if the evidence before him was legally sufficient to sustain them and there was no irregularity in the proceeding.[4] To allow his findings to be attacked or supported in court by new evidence would substitute the court for the administrative tribunal as the rate making body. Where it is believed that the Secretary erred in his findings because important evidence was not brought to his attention, the appropriate remedy is to apply for a rehearing before him or to institute new proceedings. He has the power and the duty to modify his order, if new evidence warrants the change. Compare *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 550. A rate order is not *res judicata*. Every rate order made may be superseded by another.

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[4]The judicial review of rate orders in suits begun under the Urgent Deficiencies Act to set aside orders of the Interstate Commerce Commission does not differ in substance from that in suits instituted by the Commission under the Interstate Commerce Act to enforce its orders. The Act to Regulate Commerce, February 4, 1887, c. 104, § 16, 24 Stat. 379, 384-5, specifically provided that, in proceedings to enforce orders of the Commission, its findings were to be merely *prima facie* evidence; and the Court was not to be restricted to the record before the Commission. Cincinnati, New Orleans & Texas Pacific Ry. Co. *v.* Interstate Commerce Commission, 162 U. S. 184, 187, 195-6; Interstate Commerce Commission *v.* Alabama Midland Ry. Co., 168 U. S. 144, 174-5. Compare United States *v.* Los Angeles & Salt Lake R. R. Co., 273 U. S. 299, 309. The Commerce Court Act, June 18, 1910, c. 309, § 13, 36 Stat. 539, 554-5,

Sixth. There is also a contention that the rates prescribed are not merely unsupported by the evidence, but are confiscatory; and that the order is therefore void. Whether the additional evidence before the master was admissible on the issue of confiscation presents a serious question of practice which was not argued by counsel. The lower court held the additional evidence admissible, and, after considering it, reached the conclusion that the charges prescribed are not unreasonably low or confiscatory. This conclusion of the lower court conforms, in our opinion, to the evidence, whether the examination be confined to that evidence which was received by the Secretary or be extended to include the additional evidence introduced before the master and the court. The question of the admissibility of the additional evidence on the issue of confiscation may, therefore, be passed, and it is passed, without decision.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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amended § 16 and restricted the scope of review as follows: "If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience . . ." This is the provision now in force, — U. S. C., Tit. 49, § 16 (12). Reparation orders are still only *prima facie* evidence. U. S. C., Tit. 49, § 16 (2).

Compare Oregon R. R. & Navigation Co. *v.* Fairchild, 224 U. S. 510, 525; Napa Valley Electric Co. *v.* Cal. R. R. Comm., 251 U. S. 366, 370; and Pacific Tel. & Tel. Co. *v.* Kuykendall, 265 U. S. 196, 200. Also the District of Columbia Public Utilities Law, Act of March 4, 1913, c. 150, § 8, par. 67, 37 Stat. 938, 989; the Valuation Act, March 1, 1913, c. 92, 37 Stat. 701, 703, U. S. C., Tit. 49, § 19a, (b) Fifth (j); and the Federal Trade Commission Act, Sept. 26, 1914, c. 311, § 5, 38 Stat. 717, 719-20, U. S. C., Tit. 15, § 45.